

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN ASSEMBLY AUGUST 22, 2006

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 26, 2006

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE MAY 9, 2006

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1759

Introduced by Senator Ashburn

February 24, 2006

An act to amend Sections 1265.5, 1338.5, 1416.26, 1522, 1526.5, 1568.07, 1568.09, 1569.17, 1569.24, 1575.7, 1596.871, 1728.1, 1736.6, 1743.9, 106700, and 116735 of, to add Section 1522.08 to, and to add Chapter 2.6 (commencing with Section 1499) to Division 2 of, the Health and Safety Code, and to amend Sections 5405 and 9719 of the Welfare and Institutions Code, relating to health and care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1759, as amended, Ashburn. Health: background checks: fees: inspections.

Under existing law, the State Department of Health Services licenses and regulates health facilities, including intermediate care facilities. A violation of these provisions is a crime.

Existing law requires the department to secure a criminal record from an appropriate law enforcement agency prior to the initial licensure or renewal of a license of any person or persons to operate or manage an intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled-nursing, or intermediate care facility/developmentally disabled, other than an intermediate care facility/developmentally disabled operated by the state, to determine whether the applicant, facility administrator or manager, any direct care staff, or any other adult living in the same location has ever been convicted of a crime other than a minor traffic violation.

~~This bill would, instead, require the department to request the Department of Justice to search for criminal record offender information. It would require that the criminal record clearance be conducted by the submission of fingerprint images and related information to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal offender record information search response~~ *revise procedures for criminal record information searches and clearances*, and would, *with certain exceptions*, prohibit direct contact by the applicant with residents until completion of the clearance, in accordance with specified procedures. This bill would further provide that if the State Department of Health Services ~~fails to meet~~ *determines that it has not met* certain criteria relating to the criminal record clearance for a period of 90 *consecutive* days certain provisions shall be suspended until the department can demonstrate that it has met those criteria for a period of 90 *consecutive* days. By imposing additional licensure requirements on these facilities the bill would change the definition of an existing crime, thus creating a state-mandated local program.

Existing law requires that a criminal record clearance shall be conducted for all nurse assistants by the submission of fingerprint cards to the department for processing at the Department of Justice, and requires completion of the record clearance prior to issuance or renewal of a certificate.

This bill would, instead, require the criminal record *information* clearance be conducted by the submission of fingerprint images and related information to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal offender record information

search response, and would prohibit direct contact by the applicant with residents until completion of the clearance, in accordance with specified procedures. This bill would further provide that if the State Department of Health Services fails to meet certain criteria relating to the criminal record clearance for a period of 90 days, certain provisions shall be suspended until the department can demonstrate that it has met those criteria for a period of 90 days.

This bill would impose an additional requirement for licensing or certification under specified health care provider licensing programs administered by the State Department of Health Services by requiring that any person or entity licensed under one of the applicable programs disclose any revocation or other final administrative action taken against a license, certificate, registration, or other permission to engage in a profession, vocation, or occupation to operate a facility or institution.

Existing law establishes requirements, administered by the State Department of Health Services, for applicants for a nursing home facility administrator license, including the requirement that the applicant shall, as part of the application process, submit to the department 2 sets of completed fingerprint cards for a criminal record clearance through the Department of Justice.

This bill would, instead, require the applicant to electronically submit fingerprint images and related information to the Department of Justice for a criminal offender record information search, would specify that the clearance would not be complete until the offender record information search response is obtained by the department, and would prohibit the applicant from direct contact with patients until completion of the clearance, in accordance with specified procedures.

Existing law, the California Adult Day Health Care Act, requires that the State Department of Health Services, prior to issuing a new license under that act, conduct certain procedures in securing a criminal record clearance with respect to the administrator, program director, and fiscal officer of a proposed adult day health care center. Any violation of the provisions of that act is a crime.

This bill would revise those procedures by, among other things, prohibiting a person from direct contact with residents until completion of the criminal record clearance, in accordance with specified procedures. By revising those procedures this bill would revise the definition of a crime, resulting in a state-mandated local program.

Existing law, administered by the State Department of Health Services, regulates licensing of home health agencies and private duty nursing agencies and certification of certified home health aides. Existing law requires certain persons, as part of the home health agency licensure process, as well as applicants for home health aid certification, to submit to the department fingerprints for the furnishing of the person's criminal record clearance.

This bill would revise the fingerprint requirements to use the submission of electronic fingerprint images and related information to the Department of Justice.

This bill would, as to home health aides, require that the criminal record clearance be conducted by the submission of fingerprint images and related information to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal offender record information search response, and would prohibit direct contact by the applicant with residents until completion of the clearance, in accordance with specified procedures. This bill would further require that if the State Department of Health Services ~~fails to meet~~ *determines that it has not met* certain criteria relating to the criminal record clearance for a period of 90 *consecutive* days, certain provisions shall be suspended until the department can demonstrate that it has met those criteria for a period of 90 *consecutive* days.

~~This bill would require the State Department of Health Services to explore options to work with private and governmental agencies to ensure that facility licensees have adequate access to electronic transmission services, as provided.~~

Under existing law, the State Department of Social Services licenses and regulates various community care facilities, residential care facilities for the elderly and for persons with a chronic, life-threatening illness, and child day care facilities. Existing law requires the department to inspect certain of these facilities within 90 days of initial licensure, to evaluate compliance with applicable rules and regulations, and to assess the facility's continuing ability to meet regulatory requirements.

Under existing law, licensees and other individuals who are present and provide care in these facilities are required to provide fingerprints and the department is required to secure the individual's criminal history, to determine whether he or she has been convicted of a crime other than a minor traffic violation, or convicted of specified

sex-related offenses. Under existing law, violation of the provisions governing these facilities is a misdemeanor.

This bill would require an individual to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in any one of the above categories of facilities. It would require a person who is required to be fingerprinted to submit fingerprint images and related information to the Department of Justice for a criminal offender record information search.

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law requires the Department of Justice to coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in specified offices of the department by July 1, 1999.

This bill would delete that requirement.

The bill would authorize the California Department of Aging, State Department of Health Services, State Department of Alcohol and Drug Programs, State Department of Mental Health, State Department of Social Services, and the Emergency Medical Services Authority to share information with respect to applicants, licensees, certificates, or individuals who have been the subject of any administrative action resulting in the denial, suspension, probation, or revocation of a license, permit, or certificate, or in the exclusion of any person from a facility who is subject to a background check. It would require the State Department of Social Services to maintain a centralized system for the monitoring and tracking of final administrative actions, to be used by those state entities as a part of the background check process. To the extent that additional funds are needed for this purpose, this bill would require the implementation of these provisions to be contingent upon a specific appropriation provided for this purpose in the annual Budget Act.

Existing law requires that, within 90 days after the date of issuance of a license or special permit to operate a community care facility or a residential care facility for the elderly or for persons with chronic life-threatening illnesses, the department inspect the facility.

This bill would require, instead, that this inspection occur within 90 days after a facility accepts its first client for placement following the issuance of a license.

Existing law provides for the certification of registered environmental health specialists by the State Department of Health Services. Existing law establishes application, examination, and renewal fees for this certification.

This bill would increase those fee amounts, as specified.

Existing law provides for the regulation of public water systems by the department. Existing law requires the department to inspect each public water system at least annually.

This bill would require the department, instead, to inspect each public water system either annually, biennially, or every 3 years, depending on the nature of the water source. It would allow the department to inspect public water systems on a more frequent basis.

Existing law establishes within the California Department of Aging, the Office of the State Long-Term Care Ombudsman to promote the development, coordination, and utilization of resources to meet the long-term care needs of older individuals. Existing law requires the office to sponsor a meeting of representatives of approved organizations at least twice each year, and provide training to these representatives as appropriate.

This bill would require that, beginning July 1, 2007, prior to acceptance by the office as designated ombudsmen, the State Department of Social Services conduct a criminal record clearance and that the criminal record clearance be completed as prescribed. ~~The bill would require the office to contract with the State Department of Social Services to conduct the criminal background check.~~

The bill would incorporate additional changes to Section 1265.5 of the Health and Safety Code, made by this bill and AB 2564 to take effect if both bills are chaptered and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1265.5 of the Health and Safety Code is amended to read:

1265.5. ~~The Legislature hereby finds and declares that 90 percent of all criminal record reports requested through to the Department of Justice's Licensing and Certification Program are now cleared and processed within three business days after they are received by the department, and the remaining 10 percent require individual processing, investigation, and determination.~~

~~(a) (1) Prior (a) (1) Prior~~ to the initial licensure or renewal of a license of any person or persons to operate or manage an intermediate care facility/developmentally disabled habilitative, an intermediate care facility/developmentally disabled-nursing, or an intermediate care facility/developmentally disabled, other than an intermediate care facility/developmentally disabled operated by the state that secures criminal record clearances for its employees through a method other than as specified in this section or upon the hiring of direct care staff by any of these facilities, the department shall ~~request~~ *secure from* the Department of Justice ~~to search for~~ criminal offender record information to determine whether the applicant, facility administrator or manager, any direct care staff, or any other adult living in the same location, has ever been convicted of a crime other than a minor traffic violation.

(2) The criminal record clearance shall require the applicant to submit electronic fingerprint images and related information of the facility administrator or manager, and any direct care staff, or any other adult living in the same location, to the Department of Justice. Applicants shall be responsible for any cost associated with capturing or transmitting the fingerprint images and related information. ~~The department shall explore options to work with private entities, government agencies, and law enforcement agencies to ensure that licensees have adequate access to electronic transmission sites, including requiring the department to maintain a contract for electronic transmission services in each of the district offices where facilities have indicated problems with timely access to electronic transmission sites or consistent delays of more than three business days in obtaining~~

1 ~~appointments for electronic transmission services through a~~
2 ~~private entity, government agency, or law enforcement agency.~~

3 (3) (A) The Licensing and Certification Program shall issue
4 an All Facilities Letter (AFL) to facility licensees when *it*
5 *determines that both of the following criteria are met have been*
6 *met for a period of 30 days:*

7 (i) The program receives, within three business days, 95
8 percent of its total responses indicating no evidence of recorded
9 criminal information from the Department of Justice.

10 (ii) The program processes 95 percent of its total responses
11 requiring disqualification in accordance with subdivision ~~(e)~~ (b),
12 *with notices mailed to the facility*, no later than 45 days after the
13 date that the *criminal offender record information* report is
14 received from the Department of Justice.

15 (B) After the AFL is issued, ~~licensees~~ *facilities* shall not allow
16 newly hired facility administrators, managers, direct care staff, or
17 any other adult living in the same location to have direct contact
18 with clients or residents of the facility prior to completion of the
19 criminal record clearance. A criminal record clearance shall be
20 complete when the department has obtained the person's criminal
21 offender record information search response from the
22 Department of Justice and has determined that the person is not
23 disqualified from engaging in the activity for which clearance is
24 required. ~~Notwithstanding any other provision of law, the~~
25 ~~department may, without taking regulatory action pursuant to~~
26 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
27 ~~Division 3 of Title 2 of the Government Code, implement,~~
28 ~~interpret, or make specific this paragraph by means of an AFL or~~
29 ~~similar instruction.~~

30 (C) *An applicant or certificate holder who may be disqualified*
31 *on the basis of a criminal conviction shall provide the*
32 *department with a certified copy of the judgment of each*
33 *conviction. In addition, the individual may, during a period of*
34 *two years after the department receives the criminal record*
35 *report, provide the department with evidence of good character*
36 *and rehabilitation in accordance with subdivision (c). Upon*
37 *receipt of a new application for certification of the individual, the*
38 *department may receive and consider the evidence during the*
39 *two-year period without requiring additional fingerprint imaging*
40 *to clear the individual.*

1 (4) *The department's Licensing and Certification Program*
2 *shall explore and implement methods for maximizing its*
3 *efficiency in processing criminal record clearances within the*
4 *requirements of law, including a streamlined clearance process*
5 *for persons that have been disqualified in the basis of criminal*
6 *convictions that do not require automatic denial pursuant to*
7 *subdivision (b).*

8 ~~(4)~~

9 (5) An applicant and any other person specified in this
10 subdivision, as part of the background clearance process, shall
11 provide information as to whether or not the person has any prior
12 criminal convictions, has had any arrests within the past
13 12-month period, or has any active arrests, and shall certify that,
14 to the best of his or her knowledge, the information provided is
15 true. This requirement is not intended to duplicate existing
16 requirements for individuals who are required to submit
17 fingerprint images as part of a criminal background clearance
18 process. Every applicant shall provide information on any prior
19 administrative action taken against him or her by any federal,
20 state, or local governmental agency and shall certify that, to the
21 best of his or her knowledge, the information provided is true. An
22 applicant or other person required to provide information
23 pursuant to this section that knowingly or willfully makes false
24 statements, representations, or omissions may be subject to
25 administrative action, including, but not limited to, denial of his
26 or her application or exemption or revocation of any exemption
27 previously granted.

28 (b) (1) The application for licensure or renewal shall be
29 denied if the criminal record indicates that the person seeking
30 initial licensure or renewal of a license referred to in subdivision
31 (a) has been convicted of a violation or attempted violation of
32 any one or more of the following Penal Code provisions: Section
33 187, subdivision (a) of Section 192, Section 203, 205, 206, 207,
34 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1,
35 Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,
36 subdivisions (c), (d), (f), and (g) of Section 286, Section 288,
37 subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,
38 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d
39 to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666,
40 unless any of the following applies:

1 (A) The person was convicted of a felony and has obtained a
2 certificate of rehabilitation under Chapter 3.5 (commencing with
3 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the
4 information or accusation against the person has been dismissed
5 pursuant to Section 1203.4 of the Penal Code with regard to that
6 felony.

7 (B) The person was convicted of a misdemeanor and the
8 information or accusation against the person has been dismissed
9 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

10 (C) The person was convicted of a felony or a misdemeanor,
11 but has previously disclosed the fact of each conviction to the
12 department and the department has made a determination in
13 accordance with law that the conviction does not disqualify the
14 person.

15 (2) The application for licensure or renewal shall be denied if
16 the criminal record of the person includes a conviction in another
17 state for an offense that, if committed or attempted in this state,
18 would have been punishable as one or more of the offenses set
19 forth in paragraph (1), unless evidence of rehabilitation
20 comparable to the dismissal of a misdemeanor or a certificate of
21 rehabilitation as set forth in subparagraph (A) or (B) of paragraph
22 (1) is provided to the department.

23 (c) If the criminal record of a person described in subdivision
24 (a) indicates any conviction other than a minor traffic violation or
25 other than a conviction listed in subdivision (b), the department
26 may deny the application for licensure or renewal. In determining
27 whether or not to deny the application for licensure or renewal
28 pursuant to this subdivision, the department shall take into
29 consideration the following factors as evidence of good character
30 and rehabilitation:

31 (1) The nature and seriousness of the offense under
32 consideration and its relationship to their employment duties and
33 responsibilities.

34 (2) Activities since conviction, including employment or
35 participation in therapy or education, that would indicate changed
36 behavior.

37 (3) The time that has elapsed since the commission of the
38 conduct or offense referred to in paragraph (1) or (2) and the
39 number of offenses.

1 (4) The extent to which the person has complied with any
2 terms of parole, probation, restitution, or any other sanction
3 lawfully imposed against the person.

4 (5) Any rehabilitation evidence, including character
5 references, submitted by the person.

6 (6) Employment history and current employer
7 recommendations.

8 (7) Circumstances surrounding the commission of the offense
9 that would demonstrate the unlikelihood of repetition.

10 (8) The granting by the Governor of a full and unconditional
11 pardon.

12 (9) A certificate of rehabilitation from a superior court.

13 (d) Nothing in this section shall be construed to require a
14 criminal record check of a person receiving services in an
15 intermediate care facility/developmentally disabled habilitative,
16 intermediate care facility/developmentally disabled-nursing, or
17 intermediate care facility/developmentally disabled.

18 (e) For purposes of this section, “direct care staff” means all
19 facility staff who are trained and experienced in the care of
20 persons with developmental disabilities and who directly provide
21 program and nursing services to clients. Administrative and
22 licensed personnel shall be considered direct care staff when
23 directly providing program and nursing services to clients.
24 Persons employed as consultants and acting as direct care staff
25 shall be subject to the same requirements for a criminal record
26 clearance as other direct care staff. However, the employing
27 facility shall not be required to pay any costs associated with that
28 criminal record clearance.

29 (f) Upon the employment of any person specified in
30 subdivision (a), and prior to any contact with clients or residents,
31 the facility shall ensure that electronic fingerprint images and
32 related information are submitted to the Department of Justice for
33 the purpose of obtaining a criminal record check.

34 (g) The department shall develop procedures to ensure that
35 any licensee, direct care staff, or certificate holder for whom a
36 criminal record has been obtained pursuant to this section or
37 Section 1338.5 or 1736 shall not be required to obtain multiple
38 criminal record clearances.

39 (h) If, at any time, the department *determines that it* does not
40 meet the standards specified in clauses (i) and (ii) of

1 subparagraph (A) of paragraph (3) of subdivision (a), for a period
2 of 90 *consecutive* days, the requirements in paragraph (3) of
3 subdivision (a) shall be ~~suspended~~ *inoperative* until the
4 department can demonstrate that it has met those standards for a
5 period of 90 *consecutive* days.

6 (i) *During any period of time in which the requirements of*
7 *subdivision (a) are inoperative, facilities may allow newly hired*
8 *facility administrators, managers, direct care staff, or any other*
9 *adult living in the same location to have direct contact with*
10 *clients or residents of the facility after those persons have*
11 *submitted livescan fingerprint images to the Department of*
12 *Justice, and the department shall issue an AFL advising facilities*
13 *of this change in the statutory requirement.*

14 (j) *Notwithstanding any other provision of law, the department*
15 *is authorized to provide an individual with a copy of his or her*
16 *state or federal level criminal offender record information search*
17 *response as provided to that department by the Department of*
18 *Justice if the department has denied a criminal background*
19 *clearance based on this information and the individual makes a*
20 *written request to the department for a copy specifying an*
21 *address to which it is to be sent. The state or federal level*
22 *criminal offender record information search response shall not*
23 *be modified or altered from its form or content as provided by*
24 *the Department of Justice and shall be provided to the address*
25 *specified by the individual in his or her written request. The*
26 *department shall retain a copy of the individual's written request*
27 *and the response and date provided.*

28 SEC. 1.5. *Section 1265.5 of the Health and Safety Code is*
29 *amended to read:*

30 1265.5. (a) (1) Prior to the initial licensure or renewal of a
31 license of any person or persons to operate or manage an
32 intermediate care facility/developmentally disabled habilitative,
33 an intermediate care facility/developmentally disabled nursing, or
34 an intermediate care facility/developmentally disabled, other than
35 an intermediate care facility/developmentally disabled operated
36 by the state that secures criminal record clearances for its
37 employees through a method other than as specified in this
38 section or upon the hiring of direct care staff by any of these
39 facilities, the ~~state~~ department shall secure from ~~an appropriate~~
40 ~~law enforcement agency~~ *a the Department of Justice* criminal

1 offender record information to determine whether the applicant,
2 facility administrator or manager, any direct care staff, or any
3 other adult living in the same location, has ever been convicted
4 of a crime other than a minor traffic violation.

5 (2) (A) *The criminal record clearance shall require the*
6 *applicant to submit electronic fingerprint images and related*
7 *information of the facility administrator or manager, and any*
8 *direct care staff, or any other adult living in the same location, to*
9 *the Department of Justice. Applicants shall be responsible for*
10 *any cost associated with capturing or transmitting the fingerprint*
11 *images and related information.*

12 (B) *The criminal record clearance shall be completed prior to*
13 *direct staff contact with residents of the facility. A criminal*
14 *record clearance shall be complete when the department has*
15 *obtained the person's criminal record information from the*
16 *Department of Justice and has determined that he or she is not*
17 *disqualified from engaging in the activity for which clearance is*
18 *required.*

19 (3) (A) *The Licensing and Certification Program shall issue*
20 *an All Facilities Letter (AFL) to facility licensees when it*
21 *determines that both of the following criteria have been met for a*
22 *period of 30 days:*

23 (i) *The program receives, within three business days, 95*
24 *percent of its total responses indicating no evidence of recorded*
25 *criminal information from the Department of Justice.*

26 (ii) *The program processes 95 percent of its total responses*
27 *requiring disqualification in accordance with subdivision (b),*
28 *with notices mailed to the facility no later than 45 days after the*
29 *date that the criminal offender record information report is*
30 *received from the Department of Justice.*

31 (B) *After the AFL is issued, facilities shall not allow newly*
32 *hired facility administrators, managers, direct care staff, or any*
33 *other adult living in the same location to have direct contact with*
34 *clients or residents of the facility prior to completion of the*
35 *criminal record clearance. A criminal record clearance shall be*
36 *complete when the department has obtained the person's*
37 *criminal offender record information search response from the*
38 *Department of Justice and has determined that the person is not*
39 *disqualified from engaging in the activity for which clearance is*
40 *required.*

1 (C) An applicant or certificate holder who may be disqualified
2 on the basis of a criminal conviction shall provide the
3 department with a certified copy of the judgment of each
4 conviction. In addition, the individual may, during a period of
5 two years after the department receives the criminal record
6 report, provide the department with evidence of good character
7 and rehabilitation in accordance with subdivision (c). Upon
8 receipt of a new application for certification of the individual, the
9 department may receive and consider the evidence during the
10 two-year period without requiring additional fingerprint imaging
11 to clear the individual.

12 (D) The department's Licensing and Certification Program
13 shall explore and implement methods for maximizing its
14 efficiency in processing criminal record clearances within the
15 requirements of law, including a streamlined clearance process
16 for persons that have been disqualified in the basis of criminal
17 convictions that do not require automatic denial pursuant to
18 subdivision (b).

19 (4) An applicant and any other person specified in this
20 subdivision, as part of the background clearance process, shall
21 provide information as to whether or not the person has any
22 prior criminal convictions, has had any arrests within the past
23 12-month period, or has any active arrests, and shall certify that,
24 to the best of his or her knowledge, the information provided is
25 true. This requirement is not intended to duplicate existing
26 requirements for individuals who are required to submit
27 fingerprint images as part of a criminal background clearance
28 process. Every applicant shall provide information on any prior
29 administrative action taken against him or her by any federal,
30 state, or local governmental agency and shall certify that, to the
31 best of his or her knowledge, the information provided is true. An
32 applicant or other person required to provide information
33 pursuant to this section that knowingly or willfully makes false
34 statements, representations, or omissions may be subject to
35 administrative action, including, but not limited to, denial of his
36 or her application or exemption or revocation of any exemption
37 previously granted.

38 (b) (1) The application for licensure or renewal shall be
39 denied if the criminal record indicates that the person seeking
40 initial licensure or renewal of a license referred to in subdivision

(a) has been convicted of a violation or attempted violation of any one or more of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666, unless any of the following applies:

(A) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code and the information or accusation against the person has been dismissed pursuant to Section 1203.4 of the Penal Code with regard to that felony.

(B) The person was convicted of a misdemeanor and the information or accusation against the person has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(C) The person was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department and the department has made a determination in accordance with law that the conviction does not disqualify the person.

~~(D) The person was convicted of a misdemeanor violation of Section 488 or 496 and has had no subsequent conviction of either offense in the last five years. This paragraph shall become inoperative on August 1, 2001.~~

(2) The application for licensure or renewal shall be denied if the criminal record of the person includes a conviction in another state for an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in paragraph (1), unless evidence of rehabilitation comparable to the dismissal of a misdemeanor or a certificate of rehabilitation as set forth in subparagraph (A) or (B) of paragraph (1) is provided to the department.

(c) If the criminal record of a person described in subdivision (a) indicates any conviction other than a minor traffic violation or other than a conviction listed in subdivision (b), the department may deny the application for licensure or renewal. In determining

1 whether or not to deny the application for licensure or renewal
2 pursuant to this subdivision, the department shall take into
3 consideration the following factors as evidence of good character
4 and rehabilitation:

5 (1) The nature and seriousness of the offense under
6 consideration and its relationship to their employment duties and
7 responsibilities.

8 (2) Activities since conviction, including employment or
9 participation in therapy or education, that would indicate changed
10 behavior.

11 (3) The time that has elapsed since the commission of the
12 conduct or offense referred to in paragraph (1) or (2) and the
13 number of offenses.

14 (4) The extent to which the person has complied with any
15 terms of parole, probation, restitution, or any other sanction
16 lawfully imposed against the person.

17 (5) Any rehabilitation evidence, including character
18 references, submitted by the person.

19 (6) Employment history and current employer
20 recommendations.

21 (7) Circumstances surrounding the commission of the offense
22 that would demonstrate the unlikelihood of repetition.

23 (8) The granting by the Governor of a full and unconditional
24 pardon.

25 (9) A certificate of rehabilitation from a superior court.

26 (d) Nothing in this section shall be construed to require a
27 criminal record check of a person receiving services in an
28 intermediate care facility/developmentally disabled habilitative,
29 intermediate care facility/developmentally disabled-nursing, or
30 intermediate care facility/developmentally disabled.

31 (e) For purposes of this section, “direct care staff” means all
32 facility staff who are trained and experienced in the care of
33 persons with developmental disabilities and who directly provide
34 program and nursing services to clients. Administrative and
35 licensed personnel shall be considered direct care staff when
36 directly providing program and nursing services to clients.
37 Persons employed as consultants and acting as direct care staff
38 shall be subject to the same requirements for a criminal record
39 clearance as other direct care staff. However, the employing

1 facility shall not be required to pay any costs associated with that
2 criminal record clearance.

3 (f) Upon the employment of any person specified in
4 subdivision (a), and prior to any contact with clients or residents,
5 the facility ~~shall submit fingerprint cards to the department~~
6 *ensure that electronic fingerprint images are submitted to the*
7 *Department of Justice* for the purpose of obtaining a criminal
8 record check.

9 (g) The department shall develop procedures to ensure that
10 any licensee, direct care staff, or certificate holder for whom a
11 criminal record has been obtained pursuant to this section or
12 Section 1338.5 or 1736 shall not be required to obtain multiple
13 criminal record clearances.

14 (h) *In addition to the persons who are not required to obtain*
15 *multiple criminal record clearances pursuant to subdivision (g),*
16 *a person shall not be required to obtain a separate criminal*
17 *record clearance if the person meets all of the following criteria:*

18 (1) *The person is employed as a consultant and acts as direct*
19 *care staff.*

20 (2) *The person is a registered nurse, licensed vocational*
21 *nurse, physical therapist, occupational therapist, or*
22 *speech-language pathologist.*

23 (3) *The person has obtained a criminal record clearance as a*
24 *prerequisite to holding a license or certificate to provide direct*
25 *care services.*

26 (4) *The person has a license or certificate to provide direct*
27 *care service that is in good standing with the appropriate*
28 *licensing or certification board.*

29 (5) *The person is providing time-limited specialized clinical*
30 *care or services.*

31 (6) *The person is not left alone with the client.*

32 (i) *If, at any time, the department determines that it does not*
33 *meet the standards specified in clauses (i) and (ii) of*
34 *subparagraph (A) of paragraph (3) of subdivision (a), for a*
35 *period of 90 consecutive days, the requirements in paragraph (3)*
36 *of subdivision (a) shall be suspended until the department*
37 *determines that it has met those standards for a period of 90*
38 *consecutive days.*

39 (j) *During any period of time in which the requirements of*
40 *paragraph (3) of subdivision (a) are inoperative, facilities may*

1 *allow newly hired facility administrators, managers, direct care*
2 *staff, or any other adult living in the same location to have direct*
3 *contact with clients or residents of the facility after those persons*
4 *have submitted livescan fingerprint images to the Department of*
5 *Justice, and the department shall issue an AFL advising of this*
6 *change in the statutory requirement.*

7 *(k) Notwithstanding any other provision of law, the*
8 *department is authorized to provide an individual with a copy of*
9 *his or her state or federal level criminal offender record*
10 *information search response as provided to that department by*
11 *the Department of Justice if the department has denied a*
12 *criminal background clearance based on this information and*
13 *the individual makes a written request to the department for a*
14 *copy specifying an address to which it is to be sent. The state or*
15 *federal level criminal offender record information search*
16 *response shall not be modified or altered from its form or content*
17 *as provided by the Department of Justice and shall be provided*
18 *to the address specified by the individual in his or her written*
19 *request. The department shall retain a copy of the individual's*
20 *written request and the response and date provided.*

21 SEC. 2. Section 1338.5 of the Health and Safety Code is
22 amended to read:

23 ~~1338.5. (a) (1) The Legislature hereby finds and declares~~
24 ~~that 90 percent of all criminal record reports requested through~~
25 ~~the Department of Justice's Licensing and Certification Program~~
26 ~~are now cleared and processed within three business days after~~
27 ~~they are received by the department, and the remaining 10~~
28 ~~percent require individual processing, investigation, and~~
29 ~~determination.~~

30 ~~(2)~~

31 *1338.5. (a) (1) (A) A criminal record clearance shall be*
32 *conducted for all nurse assistants by the submission of fingerprint*
33 *images and related information to the state department for*
34 *processing at the Department of Justice. The licensing and*
35 *certification program shall issue an All Facilities Letter (AFL) to*
36 *facility licensees when both of the following criteria are met:*

37 ~~(A)~~

38 *(i) The program receives, within three business days, 95*
39 *percent of its total responses indicating no evidence of recorded*
40 *criminal information from the Department of Justice.*

1 ~~(B)~~

2 (ii) The program processes 95 percent of its total responses
3 requiring disqualification in accordance with paragraph (2) of
4 subdivision (C) of Section 1337.9, no later than 45 days after the
5 date that the report is received from the Department of Justice.

6 ~~(3)~~

7 (B) After the AFL is issued, licensees shall not allow nurse
8 assistant trainees or newly hired nurse assistants to have direct
9 contact with clients or residents of the facility prior to completion
10 of the criminal record clearance. A criminal record clearance
11 shall be complete when the department has obtained the person's
12 criminal offender record information search response information
13 from the Department of Justice and has determined that the
14 person is not disqualified from engaging in the activity for which
15 clearance is required. Notwithstanding any other provision of
16 law, the department may, without taking regulatory action
17 pursuant to Chapter 3.5 (commencing with Section 11340) of
18 Part 1 of Division 3 of Title 2 of the Government Code,
19 implement, interpret, or make specific this paragraph by means
20 of an AFL or similar instruction. ~~Applicants shall be responsible~~
21 ~~for any costs associated with capturing or transmitting the~~
22 ~~fingerprint images and related information.~~ The fee to cover the
23 processing costs of the Department of Justice, not including the
24 costs associated with capturing or transmitting the fingerprint
25 images and related information, shall not exceed thirty-two
26 dollars (\$32) per submission.

27 (C) *An applicant or certificate holder who may be disqualified*
28 *on the basis of a criminal conviction shall provide the*
29 *department with a certified copy of the judgment of each*
30 *conviction. In addition, the individual may, during a period of*
31 *two years after the department receives the criminal record*
32 *report, provide the department with evidence of good character*
33 *and rehabilitation in accordance with subdivision (d) of Section*
34 *1337.9. Upon receipt of a new application for certification of the*
35 *individual, the department may receive and consider the evidence*
36 *during the two-year period without requiring additional*
37 *fingerprint imaging to clear the individual.*

38 (D) *The department's Licensing and Certification Program*
39 *shall explore and implement methods for maximizing its*
40 *efficiency in processing criminal record clearances within the*

1 *requirements of law, including a streamlined clearance process*
2 *for persons who have been disqualified on the basis of criminal*
3 *convictions that do not require automatic denial pursuant to*
4 *paragraph (2) of subdivision (a) of Section 1337.9.*

5 ~~(4)~~

6 (2) (A) Upon enrollment in a training program for nurse
7 assistant certification, and prior to direct contact with residents, a
8 candidate for training shall submit a training and examination
9 application and the fingerprint cards to the state department to
10 receive a criminal record review through the Department of
11 Justice. Submission of the fingerprints to the Federal Bureau of
12 Investigation shall be at the discretion of the state department.
13 ~~The criminal record shall be completed prior to direct contact~~
14 ~~with residents by the nurse assistant applicant.~~

15 ~~(B) New nurse assistant applicants who are unemployed and~~
16 ~~unable to pay the fee charged by the Department of Justice~~
17 ~~pursuant to paragraph (1) of subdivision (a) due to financial~~
18 ~~hardship may request a waiver for a period not to exceed six~~
19 ~~months. The request for waiver shall be made in writing at the~~
20 ~~time the fingerprint image is submitted for processing. The~~
21 ~~applicant shall agree to pay the fee within six months of~~
22 ~~employment. The failure to pay the fee within the six-month~~
23 ~~period shall result in the inactivation of the applicant's certificate~~
24 ~~until the fee is paid in full.~~

25 ~~(C)~~

26 (B) An applicant and any other person specified in this
27 subdivision, as part of the background clearance process, shall
28 provide information as to whether or not the person has any prior
29 criminal convictions, has had any arrests within the past
30 12-month period, or has any active arrests, and shall certify that,
31 to the best of his or her knowledge, the information provided is
32 true. This requirement is not intended to duplicate existing
33 requirements for individuals who are required to submit
34 fingerprint images as part of a criminal background clearance
35 process. Every applicant shall provide information on any prior
36 administrative action taken against him or her by any federal,
37 state, or local government agency and shall certify that, to the
38 best of his or her knowledge, the information provided is true. An
39 applicant or other person required to provide information
40 pursuant to this section that knowingly or willfully makes false

1 statements, representations, or omissions may be subject to
2 administrative action, including, but not limited to, denial of his
3 or her application or exemption or revocation of any exemption
4 previously granted.

5 ~~(b) Upon receipt of the fingerprints, the Department of Justice~~
6 ~~shall notify the state department of the criminal record~~
7 ~~information, as provided for in this subdivision. If no criminal~~
8 ~~record information has been recorded, the Department of Justice~~
9 ~~shall provide the state department with a statement of that fact. If~~
10 ~~the fingerprints are illegible, the Department of Justice shall,~~
11 ~~within 15 calendar days from receipt of the fingerprints, notify~~
12 ~~the state department of that fact.~~

13 ~~(c) The department shall respond to the applicant and~~
14 ~~employer within 30 days from the date of receipt of the response~~
15 ~~described in subdivision (b).~~

16 ~~(d) The department shall receive the response described in~~
17 ~~subdivision (b) prior to certifying a nurse assistant and prior to~~
18 ~~allowing direct contact with residents by the nurse assistant~~
19 ~~applicant.~~

20 *(3) Each health facility that operates and is used as a clinical*
21 *skills site for certification training, and each health facility, prior*
22 *to hiring a nurse assistant applicant certified in another state or*
23 *country, shall arrange for and pay the cost of the fingerprint*
24 *live-scan service and the Department of Justice processing costs*
25 *for each applicant. Health facilities may not pass these costs*
26 *through to nurse assistant applicants unless allowed by federal*
27 *law enacted subsequent to the effective date of this paragraph.*

28 ~~(e)~~

29 *(b) The use of fingerprint live-scan technology implemented*
30 *by the Department of Justice by the year 1999 shall be used by*
31 *the Department of Justice to generate timely and accurate*
32 *positive fingerprint identification prior to nurse assistant*
33 *certification and prior to direct contact with residents by the*
34 *nurse assistant applicant. The department shall explore options to*
35 *work with private and governmental agencies to ensure that*
36 *licensees have adequate access to electronic transmission sites,*
37 *including requiring the department to maintain a contract for*
38 *electronic transmission services in each of the district offices*
39 *where facilities have indicated problems with timely access to*
40 *electronic transmission sites or consistent delays of more than*

1 three business days in obtaining appointments for electronic
2 transmission services through a private entity, government
3 agency, or law enforcement agency.

4 ~~(f)~~

5 (c) The state department shall develop procedures to ensure
6 that any licensee, direct care staff, or certificate holder for whom
7 a criminal record has been obtained pursuant to this section or
8 Section 1265.5 or 1736 shall not be required to obtain multiple
9 criminal record clearances.

10 ~~(g)~~

11 (d) If the department is experiencing a delay in processing the
12 renewal of the certified nursing assistant's certification at the
13 time of the expiration of the certified nursing assistant's
14 certification, the department may extend the expiration of the
15 certified nursing assistant's certification for six months.

16 ~~(h)~~

17 (e) If, at any time, the department *determines that it* does not
18 meet the standards specified in clauses (i) and (ii) of
19 subparagraph (A) of paragraph (1) of subdivision (a), for a period
20 of 90 *consecutive* days, the requirements in paragraph (1) of
21 subdivision (a) shall be ~~suspended~~ *inoperative* until the
22 department can demonstrate it has met those standards for a
23 period of 90 *consecutive* days.

24 (f) *During any time in which the requirements of paragraph*
25 *(1) of subdivision (a) are inoperative, facilities may allow newly*
26 *hired nurse assistants to have direct contact with clients or*
27 *residents of the facility after those persons have submitted*
28 *livescan fingerprint images to the Department of Justice, and the*
29 *department shall issue an AFL advising facilities of this change*
30 *in the statutory requirements.*

31 (g) *Notwithstanding any other provision of law, the*
32 *department is authorized to provide an individual with a copy of*
33 *his or her state or federal level criminal offender record*
34 *information search response as provided to that department by*
35 *the Department of Justice if the department has denied a*
36 *criminal background clearance based on this information and*
37 *the individual makes a written request to the department for a*
38 *copy specifying an address to which it is to be sent. The state or*
39 *federal level criminal offender record information search*
40 *response shall not be modified or altered from its form or content*

1 *as provided by the Department of Justice and shall be provided*
2 *to the address specified by the individual in their written request.*
3 *The department shall retain a copy of the individual's written*
4 *request and the response and date provided.*

5 SEC. 3. Section 1416.26 of the Health and Safety Code is
6 amended to read:

7 1416.26. (a) As part of the application process for a nursing
8 home administrator license, an applicant shall electronically
9 submit fingerprint images and related information, for a criminal
10 offender record information search, to the Department of Justice
11 and the Federal Bureau of Investigation, through the Department
12 of Justice. The applicant shall provide proof of electronic
13 transmission of his or her fingerprint images and related
14 information to the Department of Justice and the Federal Bureau
15 of Investigation. Upon receipt of the fingerprint images and
16 related information, the Department of Justice shall notify the
17 department with a state or federal level criminal offender record
18 information search response. If no state or federal level criminal
19 record information has been recorded, the Department of Justice
20 shall provide the department with a statement of that fact. ~~The~~
21 ~~department shall explore options to work with private and~~
22 ~~governmental agencies to ensure that licensees have adequate~~
23 ~~access to electronic transmission sites, including requiring the~~
24 ~~department to maintain a contract for electronic transmission~~
25 ~~services in each of the district offices where facilities have~~
26 ~~indicated problems with timely access to electronic transmission~~
27 ~~sites or consistent delays of more than three business days in~~
28 ~~obtaining appointments for electronic transmission services~~
29 ~~through a private entity, government agency, or law enforcement~~
30 ~~agency.~~

31 (b) This criminal record clearance shall be completed prior to
32 issuing a license. Applicants shall be responsible for any costs
33 associated with the criminal record clearance. The fee to cover
34 the processing costs of the Department of Justice, not including
35 the costs associated with capturing or transmitting the fingerprint
36 images and related information, shall not exceed thirty-two
37 dollars (\$32) for a state level criminal offender record
38 information search, and shall not exceed twenty-four dollars
39 (\$24) for a federal level criminal offender record information
40 search.

~~(e) When the Licensing and Certification Program receives 95 percent of its total responses indicating no evidence of recorded criminal information from the Department of Justice within three business days, it shall issue an All Facilities Letter (AFL) informing facility licensees. After the AFL is issued, licensees shall not allow newly hired nursing home administrators to have direct contact with clients or residents of the facility prior to completion of the criminal record clearance. A criminal record clearance shall be complete when the department has obtained the person's criminal offender record information search response from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is required. Notwithstanding any other provision of law, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this subdivision by means of an AFL or similar instruction.~~

~~(d) A criminal record clearance shall be complete when the department has obtained the person's criminal offender record information search response from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is required.~~

~~(e) An applicant and any other person specified in this section, as part of the background clearance process, shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of his or her knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit fingerprint images as part of a criminal background clearance process. Every applicant shall provide information on any prior disciplinary action taken against him or her by any federal, state, or local government agency and shall certify that, to the best of his or her knowledge, the information provided is true. An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of his~~

1 ~~or her application or exemption or revocation of any exemption~~
2 ~~previously granted.~~

3 SEC. 4. Chapter 2.6 (commencing with Section 1499) is
4 added to Division 2 of the Health and Safety Code, to read:

5
6 CHAPTER 2.6. USE OF ADMINISTRATIVE ACTION FOR
7 LICENSURE
8

9 1499. (a) Any person or entity licensed or certificated under
10 Chapter 1 (commencing with Section 1200), Chapter 2
11 (commencing with Section 1250), Chapter 2.3 (commencing with
12 Section 1400), Chapter 2.35 (commencing with Section 1416),
13 Chapter 3.3 (commencing with Section 1570), Chapter 8
14 (commencing with Section 1725), Chapter 8.3 (commencing with
15 Section 1743), Chapter 8.5 (commencing with Section 1745),
16 Chapter 8.6 (commencing with Section 1760), or Chapter 11
17 (commencing with Section 1794.01), or under Section 1247.6 of
18 the Business and Professions Code, shall, in addition to all other
19 requirements, disclose as part of the application for the license or
20 certificate any revocation or other final administrative action
21 taken against a license, certificate, registration, or other approval
22 to engage in a profession, vocation, or occupation, or a license or
23 other permission to operate a facility or institution.

24 (b) The department may consider, in determining whether to
25 grant or deny the license or certification, any final revocation or
26 other final administrative action taken against a license,
27 certificate, registration, or other permission to engage in a
28 profession, vocation, or occupation or a license or other
29 permission to operate a facility or institution.

30 (c) An applicant and any other person specified in this
31 subdivision, as part of the background clearance process, shall
32 provide information as to whether or not the person has any prior
33 criminal convictions, has had any arrests within the past
34 12-month period, or has any active arrests, and shall certify that,
35 to the best of his or her knowledge, the information provided is
36 true. This requirement is not intended to duplicate existing
37 requirements for individuals who are required to submit
38 fingerprint images as part of a criminal background clearance
39 process. Every applicant shall provide information on any prior
40 administrative action taken against him or her by any federal,

1 state, or local government agency and shall certify that, to the
2 best of his or her knowledge, the information provided is true. An
3 applicant or other person required to provide information
4 pursuant to this section that knowingly or willfully makes false
5 statements, representations, or omissions may be subject to
6 administrative action, including, but not limited to, denial of his
7 or her application or exemption or revocation of any exemption
8 previously granted.

9 SEC. 5. Section 1522 of the Health and Safety Code is
10 amended to read:

11 1522. The Legislature recognizes the need to generate timely
12 and accurate positive fingerprint identification of applicants as a
13 condition of issuing licenses, permits, or certificates of approval
14 for persons to operate or provide direct care services in a
15 community care facility, foster family home, or a certified family
16 home of a licensed foster family agency. Therefore, the
17 Legislature supports the use of the fingerprint live-scan
18 technology, as identified in the long-range plan of the
19 Department of Justice for fully automating the processing of
20 fingerprints and other data by the year 1999, otherwise known as
21 the California Crime Information Intelligence System (CAL-CII),
22 to be used for applicant fingerprints. It is the intent of the
23 Legislature in enacting this section to require the fingerprints of
24 those individuals whose contact with community care clients
25 may pose a risk to the clients' health and safety. An individual
26 shall be required to obtain either a criminal record clearance or a
27 criminal record exemption from the State Department of Social
28 Services before his or her initial presence in a community care
29 facility.

30 (a) (1) Before issuing a license or special permit to any person
31 or persons to operate or manage a community care facility, the
32 State Department of Social Services shall secure from an
33 appropriate law enforcement agency a criminal record to
34 determine whether the applicant or any other person specified in
35 subdivision (b) has ever been convicted of a crime other than a
36 minor traffic violation or arrested for any crime specified in
37 Section 290 of the Penal Code, for violating Section 245 or
38 273.5, of the Penal Code, subdivision (b) of Section 273a of the
39 Penal Code, or, prior to January 1, 1994, paragraph (2) of Section
40 273a of the Penal Code, or for any crime for which the

1 department cannot grant an exemption if the person was
2 convicted and the person has not been exonerated.

3 (2) The criminal history information shall include the full
4 criminal record, if any, of those persons, and subsequent arrest
5 information pursuant to Section 11105.2 of the Penal Code.

6 (3) Except during the 2003–04, 2004–05, 2005–06, 2006–07,
7 and 2007–08 fiscal years, neither the Department of Justice nor
8 the State Department of Social Services may charge a fee for the
9 fingerprinting of an applicant for a license or special permit to
10 operate a facility providing nonmedical board, room, and care for
11 six or less children or for obtaining a criminal record of the
12 applicant pursuant to this section.

13 (4) The following shall apply to the criminal record
14 information:

15 (A) If the State Department of Social Services finds that the
16 applicant, or any other person specified in subdivision (b), has
17 been convicted of a crime other than a minor traffic violation, the
18 application shall be denied, unless the director grants an
19 exemption pursuant to subdivision (g).

20 (B) If the State Department of Social Services finds that the
21 applicant, or any other person specified in subdivision (b) is
22 awaiting trial for a crime other than a minor traffic violation, the
23 State Department of Social Services may cease processing the
24 application until the conclusion of the trial.

25 (C) If no criminal record information has been recorded, the
26 Department of Justice shall provide the applicant and the State
27 Department of Social Services with a statement of that fact.

28 (D) If the State Department of Social Services finds after
29 licensure that the licensee, or any other person specified in
30 paragraph (2) of subdivision (b), has been convicted of a crime
31 other than a minor traffic violation, the license may be revoked,
32 unless the director grants an exemption pursuant to subdivision
33 (g).

34 (E) An applicant and any other person specified in subdivision
35 (b) shall submit fingerprint images and related information to the
36 Department of Justice for the purpose of searching the criminal
37 records of the Federal Bureau of Investigation, in addition to the
38 criminal records search required by this subdivision. If an
39 applicant and all other persons described in subdivision (b) meet
40 all of the conditions for licensure, except receipt of the Federal

1 Bureau of Investigation's criminal offender record information
2 search response for the applicant or any of the persons described
3 in subdivision (b), the department may issue a license if the
4 applicant and each person described in subdivision (b) has signed
5 and submitted a statement that he or she has never been
6 convicted of a crime in the United States, other than a traffic
7 infraction, as defined in paragraph (1) of subdivision (a) of
8 Section 42001 of the Vehicle Code. If, after licensure, the
9 department determines that the licensee or any other person
10 specified in subdivision (b) has a criminal record, the license may
11 be revoked pursuant to Section 1550. The department may also
12 suspend the license pending an administrative hearing pursuant
13 to Section 1550.5.

14 *(F) The State Department of Social Services shall develop*
15 *procedures to provide the individual's state and federal criminal*
16 *history information with the written notification of his or her*
17 *exemption denial or revocation based on the criminal record.*
18 *Receipt of the criminal history information shall be optional on*
19 *the part of the individual, as set forth in the agency's procedures.*
20 *The procedure shall protect the confidentiality and privacy of the*
21 *individual's record, and the criminal history information shall*
22 *not be made available to the employer.*

23 *(G) Notwithstanding any other provision of law, the*
24 *department is authorized to provide an individual with a copy of*
25 *his or her state or federal level criminal offender record*
26 *information search response as provided to that department by*
27 *the Department of Justice if the department has denied a*
28 *criminal background clearance based on this information and*
29 *the individual makes a written request to the department for a*
30 *copy specifying an address to which it is to be sent. The state or*
31 *federal level criminal offender record information search*
32 *response shall not be modified or altered from its form or content*
33 *as provided by the Department of Justice and shall be provided*
34 *to the address specified by the individual in their written request.*
35 *The department shall retain a copy of the individual's written*
36 *request and the response and date provided.*

37 (b) (1) In addition to the applicant, this section shall be
38 applicable to criminal convictions of the following persons:

39 (A) Adults responsible for administration or direct supervision
40 of staff.

1 (B) Any person, other than a client, residing in the facility.

2 (C) Any person who provides client assistance in dressing,
3 grooming, bathing, or personal hygiene. Any nurse assistant or
4 home health aide meeting the requirements of Section 1338.5 or
5 1736.6, respectively, who is not employed, retained, or
6 contracted by the licensee, and who has been certified or
7 recertified on or after July 1, 1998, shall be deemed to meet the
8 criminal record clearance requirements of this section. A certified
9 nurse assistant and certified home health aide who will be
10 providing client assistance and who falls under this exemption
11 shall provide one copy of his or her current certification, prior to
12 providing care, to the community care facility. The facility shall
13 maintain the copy of the certification on file as long as care is
14 being provided by the certified nurse assistant or certified home
15 health aide at the facility. Nothing in this paragraph restricts the
16 right of the department to exclude a certified nurse assistant or
17 certified home health aide from a licensed community care
18 facility pursuant to Section 1558.

19 (D) Any staff person, volunteer, or employee who has contact
20 with the clients.

21 (E) If the applicant is a firm, partnership, association, or
22 corporation, the chief executive officer or other person serving in
23 like capacity.

24 (F) Additional officers of the governing body of the applicant,
25 or other persons with a financial interest in the applicant, as
26 determined necessary by the department by regulation. The
27 criteria used in the development of these regulations shall be
28 based on the person's capability to exercise substantial influence
29 over the operation of the facility.

30 (2) The following persons are exempt from the requirements
31 applicable under paragraph (1):

32 (A) A medical professional as defined in department
33 regulations who holds a valid license or certification from the
34 person's governing California medical care regulatory entity and
35 who is not employed, retained, or contracted by the licensee if all
36 of the following apply:

37 (i) The criminal record of the person has been cleared as a
38 condition of licensure or certification by the person's governing
39 California medical care regulatory entity.

1 (ii) The person is providing time-limited specialized clinical
2 care or services.

3 (iii) The person is providing care or services within the
4 person's scope of practice.

5 (iv) The person is not a community care facility licensee or an
6 employee of the facility.

7 (B) A third-party repair person or similar retained contractor if
8 all of the following apply:

9 (i) The person is hired for a defined, time-limited job.

10 (ii) The person is not left alone with clients.

11 (iii) When clients are present in the room in which the
12 repairperson or contractor is working, a staff person who has a
13 criminal record clearance or exemption is also present.

14 (C) Employees of a licensed home health agency and other
15 members of licensed hospice interdisciplinary teams who have a
16 contract with a client or resident of the facility and are in the
17 facility at the request of that client or resident's legal
18 decisionmaker. The exemption does not apply to a person who is
19 a community care facility licensee or an employee of the facility.

20 (D) Clergy and other spiritual caregivers who are performing
21 services in common areas of the community care facility or who
22 are advising an individual client at the request of, or with the
23 permission of, the client or legal decisionmaker, are exempt from
24 fingerprint and criminal background check requirements imposed
25 by community care licensing. This exemption does not apply to a
26 person who is a community care licensee or employee of the
27 facility.

28 (E) Members of fraternal, service, or similar organizations
29 who conduct group activities for clients if all of the following
30 apply:

31 (i) Members are not left alone with clients.

32 (ii) Members do not transport clients off the facility premises.

33 (iii) The same organization does not conduct group activities
34 for clients more often than defined by the department's
35 regulations.

36 (3) In addition to the exemptions in paragraph (2), the
37 following persons in foster family homes, certified family homes,
38 and small family homes are exempt from the requirements
39 applicable under paragraph (1):

1 (A) Adult friends and family of the licensed or certified foster
2 parent, who come into the home to visit for a length of time no
3 longer than defined by the department in regulations, provided
4 that the adult friends and family of the licensee are not left alone
5 with the foster children. However, the licensee, acting as a
6 reasonable and prudent parent, as defined in paragraph (2) of
7 subdivision (a) of Section 362.04 of the Welfare and Institutions
8 Code, may allow his or her adult friends and family to provide
9 short-term care to the foster child and act as an appropriate
10 occasional short-term babysitter for the child.

11 (B) Parents of a foster child's friends when the foster child is
12 visiting the friend's home and the friend, licensed or certified
13 foster parent, or both are also present. However, the licensee,
14 acting as a reasonable and prudent parent, may allow the parent
15 of the foster child's friends to act as an appropriate short-term
16 babysitter for the child without the friend being present.

17 (C) Individuals who are engaged by any licensed or certified
18 foster parent to provide short-term care to the child for periods
19 not to exceed 24 hours. Caregivers shall use a reasonable and
20 prudent parent standard in selecting appropriate individuals to act
21 as appropriate occasional short-term babysitters.

22 (4) In addition to the exemptions specified in paragraph (2),
23 the following persons in adult day care and adult day support
24 centers are exempt from the requirements applicable under
25 paragraph (1):

26 (A) Unless contraindicated by the client's individualized
27 program plan (IPP) or needs and service plan, a spouse,
28 significant other, relative, or close friend of a client, or an
29 attendant or a facilitator for a client with a developmental
30 disability if the attendant or facilitator is not employed, retained,
31 or contracted by the licensee. This exemption applies only if the
32 person is visiting the client or providing direct care and
33 supervision to the client.

34 (B) A volunteer if all of the following applies:

35 (i) The volunteer is supervised by the licensee or a facility
36 employee with a criminal record clearance or exemption.

37 (ii) The volunteer is never left alone with clients.

38 (iii) The volunteer does not provide any client assistance with
39 dressing, grooming, bathing, or personal hygiene other than
40 washing of hands.

1 (5) (A) In addition to the exemptions specified in paragraph
2 (2), the following persons in adult residential and social
3 rehabilitation facilities, unless contraindicated by the client's
4 individualized program plan (IPP) or needs and services plan, are
5 exempt from the requirements applicable under paragraph (1): a
6 spouse, significant other, relative, or close friend of a client, or an
7 attendant or a facilitator for a client with a developmental
8 disability if the attendant or facilitator is not employed, retained,
9 or contracted by the licensee. This exemption applies only if the
10 person is visiting the client or providing direct care and
11 supervision to that client.

12 (B) Nothing in this subdivision shall prevent a licensee from
13 requiring a criminal record clearance of any individual exempt
14 from the requirements of this section, provided that the
15 individual has client contact.

16 (6) Any person similar to those described in this subdivision,
17 as defined by the department in regulations.

18 (c) (1) Subsequent to initial licensure, any person specified in
19 subdivision (b) and not exempted from fingerprinting shall, as a
20 condition to employment, residence, or presence in a community
21 care facility, be fingerprinted and sign a declaration under
22 penalty of perjury regarding any prior criminal convictions. The
23 licensee shall submit fingerprint images and related information
24 to the Department of Justice and the Federal Bureau of
25 Investigation, through the Department of Justice, for a state and
26 federal level criminal offender record information search, or to
27 comply with paragraph (1) of subdivision (h), prior to the
28 person's employment, residence, or initial presence in the
29 community care facility. These fingerprint images and related
30 information shall be sent by electronic transmission in a manner
31 approved by the State Department of Social Services and the
32 Department of Justice for the purpose of obtaining a permanent
33 set of fingerprints, and shall be submitted to the Department of
34 Justice by the licensee. A licensee's failure to submit fingerprint
35 images and related information to the Department of Justice for
36 the purpose of obtaining a permanent set of fingerprints, and
37 shall be submitted to the Department of Justice by the licensee. A
38 licensee's failure to submit fingerprints to the Department of
39 Justice or to comply with paragraph (1) of subdivision (h), as
40 required in this section, shall result in the citation of a deficiency

1 and the immediate assessment of civil penalties in the amount of
2 one hundred dollars (\$100) per violation, per day for a maximum
3 of five days, unless the violation is a second or subsequent
4 violation within a 12-month period in which case the civil
5 penalties shall be in the amount of one hundred dollars (\$100)
6 per violation for a maximum of 30 days, and shall be grounds for
7 disciplining the licensee pursuant to Section 1550. The
8 department may assess civil penalties for continued violations as
9 permitted by Section 1548. The fingerprint images and related
10 information shall then be submitted to the Department of Justice
11 for processing. Upon request of the licensee, who shall enclose a
12 self-addressed stamped postcard for this purpose, the Department
13 of Justice shall verify receipt of the fingerprints.

14 (2) Within 14 calendar days of the receipt of the fingerprint
15 images, the Department of Justice shall notify the State
16 Department of Social Services of the criminal record
17 information, as provided for in subdivision (a). If no criminal
18 record information has been recorded, the Department of Justice
19 shall provide the licensee and the State Department of Social
20 Services with a statement of that fact within 14 calendar days of
21 receipt of the fingerprint images. Documentation of the
22 individual's clearance or exemption shall be maintained by the
23 licensee and be available for inspection. If new fingerprint
24 images are required for processing, the Department of Justice
25 shall, within 14 calendar days from the date of receipt of the
26 fingerprints, notify the licensee that the fingerprints were
27 illegible, the Department of Justice shall notify the State
28 Department of Social Services, as required by Section 1522.04,
29 and shall also notify the licensee by mail, within 14 days of
30 electronic transmission of the fingerprints to the Department of
31 Justice, if the person has no criminal history recorded. A
32 violation of the regulations adopted pursuant to Section 1522.04
33 shall result in the citation of a deficiency and an immediate
34 assessment of civil penalties in the amount of one hundred
35 dollars (\$100) per violation, per day for a maximum of five days,
36 unless the violation is a second or subsequent violation within a
37 12-month period in which case the civil penalties shall be in the
38 amount of one hundred dollars (\$100) per violation for a
39 maximum of 30 days, and shall be grounds for disciplining the
40 licensee pursuant to Section 1550. The department may assess

1 civil penalties for continued violations as permitted by Section
2 1548.

3 (3) Except for persons specified in paragraph (2) of
4 subdivision (b), the licensee shall endeavor to ascertain the
5 previous employment history of persons required to be
6 fingerprinted under this subdivision. If it is determined by the
7 State Department of Social Services, on the basis of the
8 fingerprint images and related information submitted to the
9 Department of Justice, that the person has been convicted of, or
10 is awaiting trial for, a sex offense against a minor, or has been
11 convicted for an offense specified in Section 243.4, 273a, 273d,
12 273g, or 368 of the Penal Code, or a felony, the State Department
13 of Social Services shall notify the licensee to act immediately to
14 terminate the person's employment, remove the person from the
15 community care facility, or bar the person from entering the
16 community care facility. The State Department of Social Services
17 may subsequently grant an exemption pursuant to subdivision
18 (g). If the conviction or arrest was for another crime, except a
19 minor traffic violation, the licensee shall, upon notification by the
20 State Department of Social Services, act immediately to either
21 (A) terminate the person's employment, remove the person from
22 the community care facility, or bar the person from entering the
23 community care facility; or (B) seek an exemption pursuant to
24 subdivision (g). The State Department of Social Services shall
25 determine if the person shall be allowed to remain in the facility
26 until a decision on the exemption is rendered. A licensee's failure
27 to comply with the department's prohibition of employment,
28 contact with clients, or presence in the facility as required by this
29 paragraph shall be grounds for disciplining the licensee pursuant
30 to Section 1550.

31 (4) The department may issue an exemption on its own motion
32 pursuant to subdivision (g) if the person's criminal history
33 indicates that the person is of good character based on the age,
34 seriousness, and frequency of the conviction or convictions. The
35 department, in consultation with interested parties, shall develop
36 regulations to establish the criteria to grant an exemption
37 pursuant to this paragraph.

38 (5) Concurrently with notifying the licensee pursuant to
39 paragraph (3), the department shall notify the affected individual
40 of his or her right to seek an exemption pursuant to subdivision

1 (g). The individual may seek an exemption only if the licensee
2 terminates the person's employment or removes the person from
3 the facility after receiving notice from the department pursuant to
4 paragraph (3).

5 (d) (1) Before issuing a license, special permit, or certificate
6 of approval to any person or persons to operate or manage a
7 foster family home or certified family home as described in
8 Section 1506, the State Department of Social Services or other
9 approving authority shall secure from an appropriate law
10 enforcement agency a criminal record to determine whether the
11 applicant or any person specified in subdivision (b) has ever been
12 convicted of a crime other than a minor traffic violation or
13 arrested for any crime specified in Section 290 of the Penal
14 Code, for violating Section 245 or 273.5, subdivision (b) of
15 Section 273a or, prior to January 1, 1994, paragraph (2) of
16 Section 273a of the Penal Code, or for any crime for which the
17 department cannot grant an exemption if the person was
18 convicted and the person has not been exonerated.

19 (2) The criminal history information shall include the full
20 criminal record, if any, of those persons.

21 (3) Neither the Department of Justice nor the State Department
22 of Social Services may charge a fee for the fingerprinting of an
23 applicant for a license, special permit, or certificate of approval
24 described in this subdivision. The record, if any, shall be taken
25 into consideration when evaluating a prospective applicant.

26 (4) The following shall apply to the criminal record
27 information:

28 (A) If the applicant or other persons specified in subdivision
29 (b) have convictions that would make the applicant's home unfit
30 as a foster family home or a certified family home, the license,
31 special permit, or certificate of approval shall be denied.

32 (B) If the State Department of Social Services finds that the
33 applicant, or any person specified in subdivision (b) is awaiting
34 trial for a crime other than a minor traffic violation, the State
35 Department of Social Services or other approving authority may
36 cease processing the application until the conclusion of the trial.

37 (C) For the purposes of this subdivision, a criminal record
38 clearance provided under Section 8712 of the Family Code may
39 be used by the department or other approving agency.

1 (D) An applicant for a foster family home license or for
2 certification as a family home, and any other person specified in
3 subdivision (b), shall submit a set of fingerprint images and
4 related information to the Department of Justice and the Federal
5 Bureau of Investigation, through the Department of Justice, for a
6 state and federal level criminal offender record information
7 search, in addition to the criminal records search required by
8 subdivision (a). If an applicant meets all other conditions for
9 licensure, except receipt of the Federal Bureau of Investigation's
10 criminal history information for the applicant and all persons
11 described in subdivision (b), the department may issue a license,
12 or the foster family agency may issue a certificate of approval, if
13 the applicant, and each person described in subdivision (b), has
14 signed and submitted a statement that he or she has never been
15 convicted of a crime in the United States, other than a traffic
16 infraction, as defined in paragraph (1) of subdivision (a) of
17 Section 42001 of the Vehicle Code. If, after licensure or
18 certification, the department determines that the licensee,
19 certified foster parent, or any person specified in subdivision (b)
20 has a criminal record, the license may be revoked pursuant to
21 Section 1550 and the certificate of approval revoked pursuant to
22 subdivision (b) of Section 1534. The department may also
23 suspend the license pending an administrative hearing pursuant
24 to Section 1550.5.

25 (5) Any person specified in this subdivision shall, as a part of
26 the application, be fingerprinted and sign a declaration under
27 penalty of perjury regarding any prior criminal convictions or
28 arrests for any crime against a child, spousal or cohabitant abuse
29 or, any crime for which the department cannot grant an
30 exemption if the person was convicted and shall submit these
31 fingerprints to the licensing agency or other approving authority.

32 (6) (A) The foster family agency shall obtain fingerprint
33 images and related information from certified home applicants
34 and from persons specified in subdivision (b) and shall submit
35 them directly to the Department of Justice by electronic
36 transmission in a manner approved by the State Department of
37 Social Services and the Department of Justice. A foster family
38 home licensee or foster family agency shall submit these
39 fingerprint images and related information to the Department of
40 Justice and the Federal Bureau of Investigation, through the

1 Department of Justice, for a state and federal level criminal
2 offender record information search, or to comply with paragraph
3 (1) of subdivision (b) prior to the person's employment,
4 residence, or initial presence in the foster family home or
5 certified family home. A foster family agency's failure to submit
6 fingerprint images and related information to the Department of
7 Justice, or comply with paragraph (1) of subdivision (h), as
8 required in this section, shall result in a citation of a deficiency,
9 and the immediate civil penalties of one hundred dollars (\$100)
10 per violation, per day for a maximum of five days, unless the
11 violation is a second or subsequent violation within a 12-month
12 period in which case the civil penalties shall be in the amount of
13 one hundred dollars (\$100) per violation for a maximum of 30
14 days, and shall be grounds for disciplining the licensee pursuant
15 to Section 1550. A violation of the regulation adopted pursuant to
16 Section 1522.04 shall result in the citation of a deficiency and an
17 immediate assessment of civil penalties in the amount of one
18 hundred dollars (\$100) per violation, per day for a maximum of
19 five days, unless the violation is a second or subsequent violation
20 within a 12-month period in which case the civil penalties shall
21 be in the amount of one hundred dollars (\$100) per violation for
22 a maximum of 30 days, and shall be grounds for disciplining the
23 foster family agency pursuant to Section 1550. A licensee's
24 failure to submit fingerprint images and related information to
25 the Department of Justice, or comply with paragraph (1) of
26 subdivision (h), as required in this section, may result in the
27 citation of a deficiency and immediate civil penalties of one
28 hundred dollars (\$100) per violation. A licensee's violation of
29 regulations adopted pursuant to Section 1522.04 may result in the
30 citation of a deficiency and an immediate assessment of civil
31 penalties in the amount of one hundred dollars (\$100) per
32 violation. The State Department of Social Services may assess
33 penalties for continued violations, as permitted by Section 1548.
34 The fingerprint images shall then be submitted to the Department
35 of Justice for processing.

36 (B) Upon request of the licensee, who shall enclose a
37 self-addressed envelope for this purpose, the Department of
38 Justice shall verify receipt of the fingerprints. Within five
39 working days of the receipt of the criminal record or information
40 regarding criminal convictions from the Department of Justice,

1 the department shall notify the applicant of any criminal arrests
2 or convictions. If no arrests or convictions are recorded, the
3 Department of Justice shall provide the foster family home
4 licensee or the foster family agency with a statement of that fact
5 concurrent with providing the information to the State
6 Department of Social Services.

7 (7) If the State Department of Social Services finds that the
8 applicant, or any other person specified in subdivision (b), has
9 been convicted of a crime other than a minor traffic violation, the
10 application shall be denied, unless the director grants an
11 exemption pursuant to subdivision (g).

12 (8) If the State Department of Social Services finds after
13 licensure or the granting of the certificate of approval that the
14 licensee, certified foster parent, or any other person specified in
15 paragraph (2) of subdivision (b), has been convicted of a crime
16 other than a minor traffic violation, the license or certificate of
17 approval may be revoked by the department or the foster family
18 agency, whichever is applicable, unless the director grants an
19 exemption pursuant to subdivision (g). A licensee's failure to
20 comply with the department's prohibition of employment,
21 contact with clients, or presence in the facility as required by
22 paragraph (3) of subdivision (c) shall be grounds for disciplining
23 the licensee pursuant to Section 1550.

24 (e) The State Department of Social Services may not use a
25 record of arrest to deny, revoke, or terminate any application,
26 license, employment, or residence unless the department
27 investigates the incident and secures evidence, whether or not
28 related to the incident of arrest, that is admissible in an
29 administrative hearing to establish conduct by the person that
30 may pose a risk to the health and safety of any person who is or
31 may become a client. The State Department of Social Services is
32 authorized to obtain any arrest or conviction records or reports
33 from any law enforcement agency as necessary to the
34 performance of its duties to inspect, license, and investigate
35 community care facilities and individuals associated with a
36 community care facility.

37 (f) (1) For purposes of this section or any other provision of
38 this chapter, a conviction means a plea or verdict of guilty or a
39 conviction following a plea of nolo contendere. Any action that
40 the State Department of Social Services is permitted to take

1 following the establishment of a conviction may be taken when
2 the time for appeal has elapsed, when the judgment of conviction
3 has been affirmed on appeal, or when an order granting probation
4 is made suspending the imposition of sentence, notwithstanding
5 a subsequent order pursuant to Sections 1203.4 and 1203.4a of
6 the Penal Code permitting the person to withdraw his or her plea
7 of guilty and to enter a plea of not guilty, or setting aside the
8 verdict of guilty, or dismissing the accusation, information, or
9 indictment. For purposes of this section or any other provision of
10 this chapter, the record of a conviction, or a copy thereof certified
11 by the clerk of the court or by a judge of the court in which the
12 conviction occurred, shall be conclusive evidence of the
13 conviction. For purposes of this section or any other provision of
14 this chapter, the arrest disposition report certified by the
15 Department of Justice, or documents admissible in a criminal
16 action pursuant to Section 969b of the Penal Code, shall be prima
17 facie evidence of the conviction, notwithstanding any other
18 provision of law prohibiting the admission of these documents in
19 a civil or administrative action.

20 (2) For purposes of this section or any other provision of this
21 chapter, the department shall consider criminal convictions from
22 another state or federal court as if the criminal offense was
23 committed in this state.

24 (g) (1) After review of the record, the director may grant an
25 exemption from disqualification for a license or special permit as
26 specified in paragraphs (1) and (4) of subdivision (a), or for a
27 license, special permit, or certificate of approval as specified in
28 paragraphs (4) and (5) of subdivision (d), or for employment,
29 residence, or presence in a community care facility as specified
30 in paragraphs (3), (4), and (5) of subdivision (c), if the director
31 has substantial and convincing evidence to support a reasonable
32 belief that the applicant and the person convicted of the crime, if
33 other than the applicant, are of good character as to justify
34 issuance of the license or special permit or granting an exemption
35 for purposes of subdivision (c). Except as otherwise provided in
36 this subdivision, an exemption may not be granted pursuant to
37 this subdivision if the conviction was for any of the following
38 offenses:

39 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
40 subdivision (a) of Section 273a or, prior to January 1, 1994,

1 paragraph (1) of Section 273a, Section 273d, 288, or 289,
2 subdivision (a) of Section 290, or Section 368 of the Penal Code,
3 or was a conviction of another crime against an individual
4 specified in subdivision (c) of Section 667.5 of the Penal Code.

5 (ii) Notwithstanding clause (i), the director may grant an
6 exemption regarding the conviction for an offense described in
7 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
8 of the Penal Code, if the employee or prospective employee has
9 been rehabilitated as provided in Section 4852.03 of the Penal
10 Code, has maintained the conduct required in Section 4852.05 of
11 the Penal Code for at least 10 years, and has the recommendation
12 of the district attorney representing the employee's county of
13 residence, or if the employee or prospective employee has
14 received a certificate of rehabilitation pursuant to Chapter 3.5
15 (commencing with Section 4852.01) of Title 6 of Part 3 of the
16 Penal Code.

17 (B) A felony offense specified in Section 729 of the Business
18 and Professions Code or Section 206 or 215, subdivision (a) of
19 Section 347, subdivision (b) of Section 417, or subdivision (a) of
20 Section 451 of the Penal Code.

21 (2) The department may not prohibit a person from being
22 employed or having contact with clients in a facility on the basis
23 of a denied criminal record exemption request or arrest
24 information unless the department complies with the
25 requirements of Section 1558.

26 (h) (1) For purposes of compliance with this section, the
27 department may permit an individual to transfer a current
28 criminal record clearance, as defined in subdivision (a), from one
29 facility to another, as long as the criminal record clearance has
30 been processed through a state licensing district office, and is
31 being transferred to another facility licensed by a state licensing
32 district office. The request shall be in writing to the State
33 Department of Social Services, and shall include a copy of the
34 person's driver's license or valid identification card issued by the
35 Department of Motor Vehicles, or a valid photo identification
36 issued by another state or the United States government if the
37 person is not a California resident. Upon request of the licensee,
38 who shall enclose a self-addressed envelope for this purpose, the
39 State Department of Social Services shall verify whether the
40 individual has a clearance that can be transferred.

1 (2) The State Department of Social Services shall hold
2 criminal record clearances in its active files for a minimum of
3 two years after an employee is no longer employed at a licensed
4 facility in order for the criminal record clearance to be
5 transferred.

6 (3) The following shall apply to a criminal record clearance or
7 exemption from the department or a county office with
8 department-delegated licensing authority:

9 (A) A county office with department-delegated licensing
10 authority may accept a clearance or exemption from the
11 department.

12 (B) The department may accept a clearance or exemption from
13 any county office with department-delegated licensing authority.

14 (C) A county office with department-delegated licensing
15 authority may accept a clearance or exemption from any other
16 county office with department-delegated licensing authority.

17 (4) With respect to notifications issued by the Department of
18 Justice pursuant to Section 11105.2 of the Penal Code concerning
19 an individual whose criminal record clearance was originally
20 processed by the department or a county office with
21 department-delegated licensing authority, all of the following
22 shall apply:

23 (A) The Department of Justice shall process a request from the
24 department or a county office with department-delegated
25 licensing authority to receive the notice only if all of the
26 following conditions are met:

27 (i) The request shall be submitted to the Department of Justice
28 by the agency to be substituted to receive the notification.

29 (ii) The request shall be for the same applicant type as the
30 type for which the original clearance was obtained.

31 (iii) The request shall contain all prescribed data elements and
32 format protocols pursuant to a written agreement between the
33 department and the Department of Justice.

34 (B) (i) On or before January 7, 2005, the department shall
35 notify the Department of Justice of all county offices that have
36 department-delegated licensing authority.

37 (ii) The department shall notify the Department of Justice
38 within 15 calendar days of the date on which a new county office
39 receives department-delegated licensing authority or a county's
40 delegated licensing authority is rescinded.

1 (C) The Department of Justice shall charge the department or
2 a county office with department-delegated licensing authority a
3 fee for each time a request to substitute the recipient agency is
4 received for purposes of this paragraph. This fee shall not exceed
5 the cost of providing the service.

6 (i) The full criminal record obtained for purposes of this
7 section may be used by the department or by a licensed adoption
8 agency as a clearance required for adoption purposes.

9 (j) If a licensee or facility is required by law to deny
10 employment or to terminate employment of any employee based
11 on written notification from the state department that the
12 employee has a prior criminal conviction or is determined
13 unsuitable for employment under Section 1558, the licensee or
14 facility shall not incur civil liability or unemployment insurance
15 liability as a result of that denial or termination.

16 (k) The State Department of Social Services may charge a fee
17 for the costs of processing electronic fingerprint images and
18 related information.

19 (l) Amendments to this section made in the 1999 portion of the
20 1999–2000 Regular Session shall be implemented commencing
21 60 days after the effective date of the act amending this section in
22 the 1999 portion of the 1999–2000 Regular Session, except that
23 those provisions for the submission of fingerprints for searching
24 the records of the Federal Bureau of Investigation shall be
25 implemented 90 days after the effective date of that act.

26 SEC. 6. Section 1522.08 is added to the Health and Safety
27 Code, to read:

28 1522.08. (a) In order to protect the health and safety of
29 persons receiving care or services from individuals or facilities
30 licensed or certified by the state, the California Department of
31 Aging, State Department of Health Services, State Department of
32 Alcohol and Drug Programs, State Department of Mental Health,
33 State Department of Social Services, and the Emergency Medical
34 Services Authority may share information with respect to
35 applicants, licensees, certificates, or individuals who have been
36 the subject of any administrative action resulting in the denial,
37 suspension, probation, or revocation of a license, permit, or
38 certificate, or in the exclusion of any person from a facility who
39 is subject to a background check, as otherwise provided by law.

(b) The State Department of Social Services shall maintain a centralized system for the monitoring and tracking of final administrative actions, to be used by the California Department of Aging, State Department of Health Services, State Department of Alcohol and Drug Programs, State Department of Mental Health, State Department of Social Services, and the Emergency Medical Services Authority as a part of the background check process. The State Department of Social Services may charge a fee to departments under the jurisdiction of the California Health and Human Services Agency sufficient to cover the cost of providing those departments with the final administrative action specified in subdivision (a). To the extent that additional funds are needed for this purpose, implementation of this subdivision shall be contingent upon a specific appropriation provided for this purpose in the annual Budget Act.

(c) The State Department of Social Services, in consultation with the other departments under the jurisdiction of the California Health and Human Services Agency, may adopt regulations to implement this section.

(d) For the purposes of this section and Section 1499, “administrative action” means any proceeding initiated by the California Department of Aging, State Department of Health Services, State Department of Alcohol and Drug Programs, State Department of Mental Health, State Department of Social Services, and the Emergency Medical Services Authority to determine the rights and duties of an applicant, licensee, or other individual or entity over which the department has jurisdiction. “Administrative action” may include, but is not limited to, action involving the denial of an application for, or the suspension or revocation of, any license, special permit, administrator certificate, criminal record clearance, or exemption.

SEC. 7. Section 1526.5 of the Health and Safety Code is amended to read:

1526.5. (a) Within 90 days after a facility accepts its first client for placement following the issuance of a license or special permit pursuant to Section 1525, the department shall inspect the facility. The licensee shall, within five business days after accepting its first client for placement, notify the department that the facility has commenced operating. Foster family homes are exempt from the provisions of this subdivision.

1 (b) The inspection required by subdivision (a) shall be
2 conducted to evaluate compliance with rules and regulations and
3 to assess the facility's continuing ability to meet regulatory
4 requirements. The department may take appropriate remedial
5 action as authorized by this chapter.

6 SEC. 8. Section 1568.07 of the Health and Safety Code is
7 amended to read:

8 1568.07. (a) (1) Within 90 days after a facility accepts its
9 first resident for placement following its initial licensure, the
10 department shall inspect the facility to evaluate compliance with
11 rules and regulations and to assess the facility's continuing
12 ability to meet regulatory requirements. The licensee shall notify
13 the department, within five business days after accepting its first
14 resident for placement, that the facility has commenced
15 operating.

16 (2) The department may take appropriate remedial action as
17 provided for in this chapter.

18 (b) (1) Every licensed residential care facility shall be
19 periodically inspected and evaluated for quality of care by a
20 representative or representatives designated by the director.
21 Evaluations shall be conducted at least annually and as often as
22 necessary to ensure the quality of care being provided.

23 (2) During each licensing inspection the department shall
24 determine if the facility meets regulatory standards, including,
25 but not limited to, providing residents with the appropriate level
26 of care based on the facility's license, providing adequate
27 staffing and services, updated resident records and assessments,
28 and compliance with basic health and safety standards.

29 (3) If the department determines that a resident requires a
30 higher level of care than the facility is authorized to provide, the
31 department may initiate a professional level of care assessment
32 by an assessor approved by the department. An assessment shall
33 be conducted in consultation with the resident, the resident's
34 physician and surgeon, and the resident's case manager, and shall
35 reflect the desires of the resident, the resident's physician and
36 surgeon, and the resident's case manager. The assessment also
37 shall recognize that certain illnesses are episodic in nature and
38 that the resident's need for a higher level of care may be
39 temporary.

1 (4) The department shall notify the residential care facility in
2 writing of all deficiencies in its compliance with this chapter and
3 the rules and regulations adopted pursuant to this chapter, and
4 shall set a reasonable length of time for compliance by the
5 facility.

6 (5) Reports on the results of each inspection, evaluation, or
7 consultation shall be kept on file in the department, and all
8 inspection reports, consultation reports, lists of deficiencies, and
9 plans of correction shall be open to public inspection in the
10 county in which the facility is located.

11 (c) Any duly authorized officer, employee, or agent of the
12 department may, upon presentation of proper identification, enter
13 and inspect any place providing personal care, supervision, and
14 services, at any time, with or without advance notice, to secure
15 compliance with, or to prevent a violation of, this chapter.

16 (d) No licensee shall discriminate or retaliate in any manner
17 against any person receiving the services of the facility of the
18 licensee, or against any employee of the facility, on the basis, or
19 for the reason, that a person or employee or any other person has
20 initiated or participated in an inspection pursuant to Section
21 1568.071.

22 (e) Any person who, without lawful authorization from a duly
23 authorized officer, employee, or agent of the department, informs
24 an owner, operator, employee, agent, or resident of a residential
25 care facility, of an impending or proposed inspection or
26 evaluation of that facility by personnel of the department, is
27 guilty of a misdemeanor and upon conviction thereof shall be
28 punished by a fine not to exceed one thousand dollars (\$1,000),
29 by imprisonment in the county jail for a period not to exceed 180
30 days, or by both a fine and imprisonment.

31 SEC. 9. Section 1568.09 of the Health and Safety Code is
32 amended to read:

33 1568.09. It is the intent of the Legislature in enacting this
34 section to require the electronic fingerprint images of those
35 individuals whose contact with residents of residential care
36 facilities for persons with a chronic, life-threatening illness may
37 pose a risk to the residents' health and safety.

38 It is the intent of the Legislature, in enacting this section, to
39 require the electronic fingerprint images of those individuals
40 whose contact with community care clients may pose a risk to the

1 clients' health and safety. An individual shall be required to
2 obtain either a criminal record clearance or a criminal record
3 exemption from the State Department of Social Services before
4 his or her initial presence in a residential care facility for persons
5 with chronic, life-threatening illness.

6 (a) (1) Before issuing a license to any person or persons to
7 operate or manage a residential care facility, the department shall
8 secure from an appropriate law enforcement agency a criminal
9 record to determine whether the applicant or any other person
10 specified in subdivision (b) has ever been convicted of a crime
11 other than a minor traffic violation or arrested for any crime
12 specified in Section 290 of the Penal Code, for violating Section
13 245 or 273.5, subdivision (b) of Section 273a or, prior to January
14 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
15 any crime for which the department cannot grant an exemption if
16 the person was convicted and the person has not been exonerated.

17 (2) The criminal history information shall include the full
18 criminal record if any, of those persons, and subsequent arrest
19 information pursuant to Section 11105.2 of the Penal Code.

20 (3) The following shall apply to the criminal record
21 information:

22 (A) If the State Department of Social Services finds that the
23 applicant or any other person specified in subdivision (b) has
24 been convicted of a crime, other than a minor traffic violation,
25 the application shall be denied, unless the director grants an
26 exemption pursuant to subdivision (f).

27 (B) If the State Department of Social Services finds that the
28 applicant, or any other person specified in subdivision (b) is
29 awaiting trial for a crime other than a minor traffic violation, the
30 State Department of Social Services may cease processing the
31 application until the conclusion of the trial.

32 (C) If no criminal record information has been recorded, the
33 Department of Justice shall provide the applicant and the State
34 Department of Social Services with a statement of that fact.

35 (D) If the State Department of Social Services finds after
36 licensure that the licensee, or any other person specified in
37 paragraph (2) of subdivision (b), has been convicted of a crime
38 other than a minor traffic violation, the license may be revoked,
39 unless the director grants an exemption pursuant to subdivision
40 (f).

1 (E) An applicant and any other person specified in subdivision
2 (b) shall submit fingerprint images and related information to the
3 Department of Justice and the Federal Bureau of Investigation,
4 through the Department of Justice, for a state and federal level
5 criminal offender record information search, in addition to the
6 search required by this subdivision. If an applicant meets all
7 other conditions for licensure, except receipt of the Federal
8 Bureau of Investigation's criminal history information for the
9 applicant and persons listed in subdivision (b), the department
10 may issue a license if the applicant and each person described by
11 subdivision (b) has signed and submitted a statement that he or
12 she has never been convicted of a crime in the United States,
13 other than a traffic infraction as defined in paragraph (1) of
14 subdivision (a) of Section 42001 of the Vehicle Code. If, after
15 licensure, the department determines that the licensee or person
16 specified in subdivision (b) has a criminal record, the license may
17 be revoked pursuant to subdivision (a) of Section 1568.082. The
18 department may also suspend the license pending an
19 administrative hearing pursuant to subdivision (b) of Section
20 1568.082.

21 (b) In addition to the applicant, the provisions of this section
22 shall be applicable to criminal convictions of the following
23 persons:

24 (1) Adults responsible for administration or direct supervision
25 of staff of the facility.

26 (2) Any person, other than a resident, residing in the facility.

27 (3) Any person who provides resident assistance in dressing,
28 grooming, bathing, or personal hygiene. Any nurse assistant or
29 home health aide meeting the requirements of Section 1338.5 or
30 1736.6, respectively, who is not employed, retained, or
31 contracted by the licensee, and who has been certified or
32 recertified on or after July 1, 1998, shall be deemed to meet the
33 criminal record clearance requirements of this section. A certified
34 nurse assistant and certified home health aide who will be
35 providing client assistance and who falls under this exemption
36 shall provide one copy of his or her current certification, prior to
37 providing care, to the residential care facility for persons with
38 chronic, life-threatening illness. The facility shall maintain the
39 copy of the certification on file as long as care is being provided
40 by the certified nurse assistant or certified home health aide at the

1 facility. Nothing in this paragraph restricts the right of the
2 department to exclude a certified nurse assistant or certified
3 home health aide from a licensed residential care facility for
4 persons with chronic, life-threatening illness pursuant to Section
5 1568.092.

6 (4) (A) Any staff person, volunteer, or employee who has
7 contact with the residents.

8 (B) A volunteer shall be exempt from the requirements of this
9 subdivision if he or she is a relative, significant other, or close
10 friend of a client receiving care in the facility and the volunteer
11 does not provide direct care and supervision of residents. A
12 volunteer who provides direct care and supervision shall be
13 exempt if the volunteer is a resident's spouse, significant other,
14 close friend, or family member and provides direct care and
15 supervision to that resident only at the request of the resident.
16 The department may define in regulations persons similar to
17 those described in this subparagraph who may be exempt from
18 the requirements of this subdivision.

19 (5) If the applicant is a firm, partnership, association, or
20 corporation, the chief executive officer or other person serving in
21 that capacity.

22 (6) Additional officers of the governing body of the applicant,
23 or other persons with a financial interest in the applicant, as
24 determined necessary by the department by regulation. The
25 criteria used in the development of these regulations shall be
26 based on the person's capability to exercise substantial influence
27 over the operation of the facility.

28 (c) (1) (A) Subsequent to initial licensure, any person
29 specified in subdivision (b) and not exempted from fingerprinting
30 shall, as a condition to employment, residence, or presence in a
31 residential care facility, be fingerprinted and sign a declaration
32 under penalty of perjury regarding any prior criminal
33 convictions. The licensee shall submit fingerprint images and
34 related information to the Department of Justice and the Federal
35 Bureau of Investigation, through the Department of Justice, for a
36 state and federal level criminal offender record information
37 search, or to comply with paragraph (1) of subdivision (g), prior
38 to the person's employment, residence, or initial presence in the
39 residential care facility.

1 (B) These fingerprint images and related information shall be
2 electronically submitted to the Department of Justice in a manner
3 approved by the State Department of Social Services and the
4 Department of Justice, for the purpose of obtaining a permanent
5 set of fingerprints. A licensee's failure to submit fingerprint
6 images and related information to the Department of Justice, or
7 to comply with paragraph (1) of subdivision (g), as required in
8 this section, shall result in the citation of a deficiency and an
9 immediate assessment of civil penalties in the amount of one
10 hundred dollars (\$100) per violation, per day for a maximum of
11 five days, unless the violation is a second or subsequent violation
12 within a 12-month period in which case the civil penalties shall
13 be in the amount of one hundred dollars (\$100) per violation for
14 a maximum of 30 days, and shall be grounds for disciplining the
15 licensee pursuant to Section 1568.082. The State Department of
16 Social Services may assess civil penalties for continued
17 violations as allowed in Section 1568.0822. The fingerprint
18 images and related information shall then be submitted to the
19 Department of Justice for processing. The licensee shall maintain
20 and make available for inspection documentation of the
21 individual's clearance or exemption.

22 (2) A violation of the regulations adopted pursuant to Section
23 1522.04 shall result in the citation of a deficiency and an
24 immediate assessment of civil penalties in the amount of one
25 hundred dollars (\$100) per violation per day for a maximum of
26 five days, unless the violation is a second or subsequent violation
27 within a 12-month period in which case the civil penalties shall
28 be in the amount of one hundred dollars (\$100) per violation for
29 a maximum of 30 days, and shall be grounds for disciplining the
30 licensee pursuant to Section 1568.082. The department may
31 assess civil penalties for continued violations as permitted by
32 Section 1568.0822.

33 (3) Within 14 calendar days of the receipt of the fingerprint
34 images, the Department of Justice shall notify the State
35 Department of Social Services of the criminal record
36 information, as provided for in this subdivision. If no criminal
37 record information has been recorded, the Department of Justice
38 shall provide the licensee and the State Department of Social
39 Services with a statement of that fact within 14 calendar days of
40 receipt of the fingerprint images. If new fingerprint images are

1 required for processing, the Department of Justice shall, within
2 14 calendar days from the date of receipt of the fingerprint
3 images, notify the licensee that the fingerprint images were
4 illegible. The Department of Justice shall notify the department,
5 as required by Section 1522.04, and shall notify the licensee by
6 mail within 14 days of electronic transmission of the fingerprint
7 images to the Department of Justice, if the person has no criminal
8 history record.

9 (4) Except for persons specified in paragraph (2) of
10 subdivision (b), the licensee shall endeavor to ascertain the
11 previous employment history of persons required to be
12 fingerprinted under this subdivision. If it is determined by the
13 State Department of Social Services, on the basis of the
14 fingerprint images submitted to the Department of Justice, that
15 the person has been convicted of a sex offense against a minor,
16 an offense specified in Section 243.4, 273a, 273d, 273g, or 368
17 of the Penal Code, or a felony, the department shall notify the
18 licensee to act immediately to terminate the person's
19 employment, remove the person from the residential care facility,
20 or bar the person from entering the residential care facility. The
21 department may subsequently grant an exemption pursuant to
22 subdivision (f). If the conviction was for another crime, except a
23 minor traffic violation, the licensee shall, upon notification by the
24 department, act immediately to either (1) terminate the person's
25 employment, remove the person from the residential care facility,
26 or bar the person from entering the residential care facility; or (2)
27 seek an exemption pursuant to subdivision (f). The department
28 shall determine if the person shall be allowed to remain in the
29 facility until a decision on the exemption is rendered. A
30 licensee's failure to comply with the department's prohibition of
31 employment, contact with clients, or presence in the facility as
32 required by this paragraph shall result in a citation of deficiency
33 and an immediate assessment of civil penalties by the department
34 against the licensee, in the amount of one hundred dollars (\$100)
35 per violation, per day for a maximum of five days, unless the
36 violation is a second or subsequent violation within a 12-month
37 period in which case the civil penalties shall be in the amount of
38 one hundred dollars (\$100) per violation for a maximum of 30
39 days, and shall be grounds for disciplining the licensee pursuant
40 to Section 1568.082.

1 (5) The department may issue an exemption on its own motion
2 pursuant to subdivision (f) if the person's criminal history
3 indicates that the person is of good character based on the age,
4 seriousness, and frequency of the conviction or convictions. The
5 department, in consultation with interested parties, shall develop
6 regulations to establish the criteria to grant an exemption
7 pursuant to this paragraph.

8 (6) Concurrently with notifying the licensee pursuant to
9 paragraph (4), the department shall notify the affected individual
10 of his or her right to seek an exemption pursuant to subdivision
11 (f). The individual may seek an exemption only if the licensee
12 terminates the person's employment or removes the person from
13 the facility after receiving notice from the department pursuant to
14 paragraph (4).

15 (d) (1) For purposes of this section or any other provision of
16 this chapter, a conviction means a plea or verdict of guilty or a
17 conviction following a plea of nolo contendere. Any action that
18 the department is permitted to take following the establishment
19 of a conviction may be taken when the time for appeal has
20 elapsed, when the judgment of conviction has been affirmed on
21 appeal, or when an order granting probation is made suspending
22 the imposition of the sentence, notwithstanding a subsequent
23 order pursuant to Sections 1203.4 and 1203.4a of the Penal Code
24 permitting that person to withdraw his or her plea of guilty and to
25 enter a plea of not guilty, setting aside the verdict of guilty, or
26 dismissing the accusation, information, or indictment. For
27 purposes of this chapter, the record of a conviction, or a copy
28 thereof certified by the clerk of the court or by a judge of the
29 court in which the conviction occurred, shall be conclusive
30 evidence of the conviction. For purposes of this section or any
31 other provision of this chapter, the arrest disposition report
32 certified by the Department of Justice, or documents admissible
33 in a criminal action pursuant to Section 969b of the Penal Code,
34 shall be prima facie evidence of the conviction, notwithstanding
35 any other provision of law prohibiting the admission of these
36 documents in a civil or administrative action.

37 (2) For purposes of this section or any other provision of this
38 chapter, the department shall consider criminal convictions from
39 another state or federal court as if the criminal offense was
40 committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professional Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background

1 *clearance based on this information and the individual makes a*
2 *written request to the department for a copy specifying an*
3 *address to which it is to be sent. The state or federal level*
4 *criminal offender record information search response shall not*
5 *be modified or altered from its form or content as provided by*
6 *the Department of Justice and shall be provided to the address*
7 *specified by the individual in his or her written request. The*
8 *department shall retain a copy of the individual's written request*
9 *and the response and date provided.*

10 SEC. 10. Section 1569.17 of the Health and Safety Code is
11 amended to read:

12 1569.17. The Legislature recognizes the need to generate
13 timely and accurate positive fingerprint identification of
14 applicants as a condition of issuing licenses, permits, or
15 certificates of approval for persons to operate or provide direct
16 care services in a residential care facility for the elderly. It is the
17 intent of the Legislature in enacting this section to require the
18 fingerprints of those individuals whose contact with clients of
19 residential care facilities for the elderly may pose a risk to the
20 clients' health and safety. An individual shall be required to
21 obtain either a criminal record clearance or a criminal record
22 exemption from the State Department of Social Services before
23 his or her initial presence in a residential care facility for the
24 elderly.

25 (a) (1) Before issuing a license to any person or persons to
26 operate or manage a residential care facility for the elderly, the
27 department shall secure from an appropriate law enforcement
28 agency a criminal record to determine whether the applicant or
29 any other person specified in subdivision (b) has ever been
30 convicted of a crime other than a minor traffic violation or
31 arrested for any crime specified in Section 290 of the Penal
32 Code, for violating Section 245 or 273.5, subdivision (b) of
33 Section 273a or, prior to January 1, 1994, paragraph (2) of
34 Section 273a of the Penal Code, or for any crime for which the
35 department cannot grant an exemption if the person was
36 convicted and the person has not been exonerated.

37 (2) The criminal history information shall include the full
38 criminal record, if any, of those persons, and subsequent arrest
39 information pursuant to Section 11105.2 of the Penal Code.

1 (3) The following shall apply to the criminal record
2 information:

3 (A) If the State Department of Social Services finds that the
4 applicant or any other person specified in subdivision (b) has
5 been convicted of a crime, other than a minor traffic violation,
6 the application shall be denied, unless the director grants an
7 exemption pursuant to subdivision (f).

8 (B) If the State Department of Social Services finds that the
9 applicant, or any other person specified in subdivision (b) is
10 awaiting trial for a crime other than a minor traffic violation, the
11 State Department of Social Services may cease processing the
12 application until the conclusion of the trial.

13 (C) If no criminal record information has been recorded, the
14 Department of Justice shall provide the applicant and the State
15 Department of Social Services with a statement of that fact.

16 (D) If the State Department of Social Services finds after
17 licensure that the licensee, or any other person specified in
18 paragraph (2) of subdivision (b), has been convicted of a crime
19 other than a minor traffic violation, the license may be revoked,
20 unless the director grants an exemption pursuant to subdivision
21 (f).

22 (E) An applicant and any other person specified in subdivision
23 (b) shall submit fingerprint images and related information to the
24 Department of Justice and the Federal Bureau of Investigation,
25 through the Department of Justice, for a state and federal level
26 criminal offender record information search, in addition to the
27 search required by subdivision (a). If an applicant meets all other
28 conditions for licensure, except receipt of the Federal Bureau of
29 Investigation's criminal history information for the applicant and
30 persons listed in subdivision (b), the department may issue a
31 license if the applicant and each person described by subdivision
32 (b) has signed and submitted a statement that he or she has never
33 been convicted of a crime in the United States, other than a
34 traffic infraction as defined in paragraph (1) of subdivision (a) of
35 Section 42001 of the Vehicle Code. If, after licensure, the
36 department determines that the licensee or person specified in
37 subdivision (b) has a criminal record, the license may be revoked
38 pursuant to Section 1569.50. The department may also suspend
39 the license pending an administrative hearing pursuant to
40 Sections 1569.50 and 1569.51.

(b) In addition to the applicant, the provisions of this section shall apply to criminal convictions of the following persons:

(1) (A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.

(F) Additional officers of the governing body of the applicant or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from requirements applicable under paragraph (1):

1 (A) A spouse, relative, significant other, or close friend of a
2 client shall be exempt if this person is visiting the client or
3 provides direct care and supervision to that client only.

4 (B) A volunteer to whom all of the following apply:

5 (i) The volunteer is at the facility during normal waking hours.

6 (ii) The volunteer is directly supervised by the licensee or a
7 facility employee with a criminal record clearance or exemption.

8 (iii) The volunteer spends no more than 16 hours per week at
9 the facility.

10 (iv) The volunteer does not provide clients with assistance in
11 dressing, grooming, bathing, or personal hygiene.

12 (v) The volunteer is not left alone with clients in care.

13 (C) A third-party contractor retained by the facility if the
14 contractor is not left alone with clients in care.

15 (D) A third-party contractor or other business professional
16 retained by a client and at the facility at the request or by
17 permission of that client. These individuals may not be left alone
18 with other clients.

19 (E) Licensed or certified medical professionals are exempt
20 from fingerprint and criminal background check requirements
21 imposed by community care licensing. This exemption does not
22 apply to a person who is a community care facility licensee or an
23 employee of the facility.

24 (F) Employees of licensed home health agencies and members
25 of licensed hospice interdisciplinary teams who have contact
26 with a resident of a residential care facility at the request of the
27 resident or resident's legal decisionmaker are exempt from
28 fingerprint and criminal background check requirements imposed
29 by community care licensing. This exemption does not apply to a
30 person who is a community care facility licensee or an employee
31 of the facility.

32 (G) Clergy and other spiritual caregivers who are performing
33 services in common areas of the residential care facility, or who
34 are advising an individual resident at the request of, or with
35 permission of, the resident, are exempt from fingerprint and
36 criminal background check requirements imposed by community
37 care licensing. This exemption does not apply to a person who is
38 a community care facility licensee or an employee of the facility.

39 (H) Any person similar to those described in this subdivision,
40 as defined by the department in regulations.

1 (I) Nothing in this paragraph shall prevent a licensee from
2 requiring a criminal record clearance of any individual exempt
3 from the requirements of this section, provided that the
4 individual has client contact.

5 (c) (1) (A) Subsequent to initial licensure, any person
6 required to be fingerprinted pursuant to subdivision (b) shall, as a
7 condition to employment, residence, or presence in a residential
8 facility for the elderly, be fingerprinted and sign a declaration
9 under penalty of perjury regarding any prior criminal
10 convictions. The licensee shall submit these fingerprint images
11 and related information to the Department of Justice and the
12 Federal Bureau of Investigation, through the Department of
13 Justice, for a state and federal level criminal offender record
14 information search, or to comply with paragraph (1) of
15 subdivision (g) prior to the person's employment, residence, or
16 initial presence in the residential care facility for the elderly.

17 (B) These fingerprint images and related information shall be
18 electronically transmitted in a manner approved by the State
19 Department of Social Services and the Department of Justice. A
20 licensee's failure to submit fingerprint images and related
21 information to the Department of Justice, or to comply with
22 paragraph (1) of subdivision (g), as required in this section, shall
23 result in the citation of a deficiency and an immediate assessment
24 of civil penalties in the amount of one hundred dollars (\$100) per
25 violation, per day for a maximum of five days, unless the
26 violation is a second or subsequent violation within a 12-month
27 period in which case the civil penalties shall be in the amount of
28 one hundred dollars (\$100) per violation for a maximum of 30
29 days, and shall be grounds for disciplining the licensee pursuant
30 to Section 1569.50. The State Department of Social Services may
31 assess civil penalties for continued violations as permitted by
32 Section 1569.49. The licensee shall then submit these fingerprint
33 images to the State Department of Social Services for processing.
34 Documentation of the individual's clearance or exemption shall
35 be maintained by the licensee and be available for inspection.
36 The Department of Justice shall notify the department, as
37 required by Section 1522.04, and notify the licensee by mail
38 within 14 days of electronic transmission of the fingerprints to
39 the Department of Justice, if the person has no criminal record. A
40 violation of the regulations adopted pursuant to Section 1522.04

1 shall result in the citation of a deficiency and an immediate
2 assessment of civil penalties in the amount of one hundred
3 dollars (\$100) per violation, per day for a maximum of five days,
4 unless the violation is a second or subsequent violation within a
5 12-month period in which case the civil penalties shall be in the
6 amount of one hundred dollars (\$100) per violation for a
7 maximum of 30 days, and shall be grounds for disciplining the
8 licensee pursuant to Section 1569.50. The department may assess
9 civil penalties for continued violations as permitted by Section
10 1569.49.

11 (2) Within 14 calendar days of the receipt of the fingerprint
12 images, the Department of Justice shall notify the State
13 Department of Social Services of the criminal record
14 information, as provided for in this subdivision. If no criminal
15 record information has been recorded, the Department of Justice
16 shall provide the licensee and the State Department of Social
17 Services with a statement of that fact within 14 calendar days of
18 receipt of the fingerprint images. If new fingerprint images are
19 required for processing, the Department of Justice shall, within
20 14 calendar days from the date of receipt of the fingerprint
21 images, notify the licensee that the fingerprint images were
22 illegible.

23 (3) Except for persons specified in paragraph (2) of
24 subdivision (b), the licensee shall endeavor to ascertain the
25 previous employment history of persons required to be
26 fingerprinted under this subdivision. If the State Department of
27 Social Services determines, on the basis of the fingerprint images
28 submitted to the Department of Justice, that the person has been
29 convicted of a sex offense against a minor, an offense specified
30 in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or
31 a felony, the State Department of Social Services shall notify the
32 licensee in writing within 15 calendar days of the receipt of the
33 notification from the Department of Justice to act immediately to
34 terminate the person's employment, remove the person from the
35 residential care facility for the elderly, or bar the person from
36 entering the residential care facility for the elderly. The State
37 Department of Social Services may subsequently grant an
38 exemption pursuant to subdivision (f). If the conviction was for
39 another crime, except a minor traffic violation, the licensee shall,
40 upon notification by the State Department of Social Services, act

1 immediately to either (1) terminate the person's employment,
2 remove the person from the residential care facility for the
3 elderly, or bar the person from entering the residential care
4 facility for the elderly or (2) seek an exemption pursuant to
5 subdivision (f). The department shall determine if the person
6 shall be allowed to remain in the facility until a decision on the
7 exemption is rendered by the department. A licensee's failure to
8 comply with the department's prohibition of employment,
9 contact with clients, or presence in the facility as required by this
10 paragraph shall result in a citation of deficiency and an
11 immediate assessment of civil penalties by the department
12 against the licensee, in the amount of one hundred dollars (\$100)
13 per violation, per day for a maximum of five days, unless the
14 violation is a second or subsequent violation within a 12-month
15 period in which case the civil penalties shall be in the amount of
16 one hundred dollars (\$100) per violation for a maximum of 30
17 days, and shall be grounds for disciplining the licensee pursuant
18 to Section 1569.50.

19 (4) The department may issue an exemption on its own motion
20 pursuant to subdivision (f) if the person's criminal history
21 indicates that the person is of good character based on the age,
22 seriousness, and frequency of the conviction or convictions. The
23 department, in consultation with interested parties, shall develop
24 regulations to establish the criteria to grant an exemption
25 pursuant to this paragraph.

26 (5) Concurrently with notifying the licensee pursuant to
27 paragraph (4), the department shall notify the affected individual
28 of his or her right to seek an exemption pursuant to subdivision
29 (f). The individual may seek an exemption only if the licensee
30 terminates the person's employment or removes the person from
31 the facility after receiving notice from the department pursuant to
32 paragraph (4).

33 (d) (1) For purposes of this section or any other provision of
34 this chapter, a conviction means a plea or verdict of guilty or a
35 conviction following a plea of nolo contendere. Any action that
36 the department is permitted to take following the establishment
37 of a conviction may be taken when the time for appeal has
38 elapsed, when the judgment of conviction has been affirmed on
39 appeal or when an order granting probation is made suspending
40 the imposition of the sentence, notwithstanding a subsequent

1 order pursuant to the provisions of Sections 1203.4 and 1203.4a
2 of the Penal Code permitting a person to withdraw his or her plea
3 of guilty and to enter a plea of not guilty, or setting aside the
4 verdict of guilty, or dismissing the accusation, information, or
5 indictment. For purposes of this section or any other provision of
6 this chapter, the record of a conviction, or a copy thereof certified
7 by the clerk of the court or by a judge of the court in which the
8 conviction occurred, shall be conclusive evidence of the
9 conviction. For purposes of this section or any other provision of
10 this chapter, the arrest disposition report certified by the
11 Department of Justice or documents admissible in a criminal
12 action pursuant to Section 969b of the Penal Code shall be prima
13 facie evidence of the conviction, notwithstanding any other
14 provision of law prohibiting the admission of these documents in
15 a civil or administrative action.

16 (2) For purposes of this section or any other provision of this
17 chapter, the department shall consider criminal convictions from
18 another state or federal court as if the criminal offense was
19 committed in this state.

20 (e) The State Department of Social Services may not use a
21 record of arrest to deny, revoke, or terminate any application,
22 license, employment, or residence unless the department
23 investigates the incident and secures evidence, whether or not
24 related to the incident of arrest, that is admissible in an
25 administrative hearing to establish conduct by the person that
26 may pose a risk to the health and safety of any person who is or
27 may become a client. The State Department of Social Services is
28 authorized to obtain any arrest or conviction records or reports
29 from any law enforcement agency as necessary to the
30 performance of its duties to inspect, license, and investigate
31 community care facilities and individuals associated with a
32 community care facility.

33 (f) (1) After review of the record, the director may grant an
34 exemption from disqualification for a license as specified in
35 paragraphs (1) and (4) of subdivision (a), or for employment,
36 residence, or presence in a residential care facility for the elderly
37 as specified in paragraphs (4), (5), and (6) of subdivision (c) if
38 the director has substantial and convincing evidence to support a
39 reasonable belief that the applicant and the person convicted of
40 the crime, if other than the applicant, are of such good character

1 as to justify issuance of the license or special permit or granting
2 an exemption for purposes of subdivision (c). However, an
3 exemption may not be granted pursuant to this subdivision if the
4 conviction was for any of the following offenses:

5 (A) An offense specified in Section 220, 243.4, or 264.1,
6 subdivision (a) of Section 273a or, prior to January 1, 1994,
7 paragraph (1) of Section 273a, Section 273d, 288, or 289,
8 subdivision (a) of Section 290, or Section 368 of the Penal Code,
9 or was a conviction of another crime against an individual
10 specified in subdivision (c) of Section 667.5 of the Penal Code.

11 (B) A felony offense specified in Section 729 of the Business
12 and Professions Code or Section 206 or 215, subdivision (a) of
13 Section 347, subdivision (b) of Section 417, or subdivision (a) of
14 Section 451 of the Penal Code.

15 (2) The director shall notify in writing the licensee or the
16 applicant of his or her decision within 60 days of receipt of all
17 information from the applicant and other sources determined
18 necessary by the director for the rendering of a decision pursuant
19 to this subdivision.

20 (3) The department may not prohibit a person from being
21 employed or having contact with clients in a facility on the basis
22 of a denied criminal record exemption request or arrest
23 information unless the department complies with the
24 requirements of Section 1569.58.

25 (g) (1) For purposes of compliance with this section, the
26 department may permit an individual to transfer a current
27 criminal record clearance, as defined in subdivision (a), from one
28 facility to another, as long as the criminal record clearance has
29 been processed through a state licensing district office, and is
30 being transferred to another facility licensed by a state licensing
31 district office. The request shall be submitted in writing to the
32 department, and shall include a copy of the person's driver's
33 license or valid identification card issued by the Department of
34 Motor Vehicles, or a valid photo identification issued by another
35 state or the United States government if the person is not a
36 California resident. Upon request of the licensee, who shall
37 enclose a self-addressed stamped envelope for this purpose, the
38 department shall verify whether the individual has a clearance
39 that can be transferred.

1 (2) The State Department of Social Services shall hold
2 criminal record clearances in its active files for a minimum of
3 two years after an employee is no longer employed at a licensed
4 facility in order for the criminal record clearances to be
5 transferred under this section.

6 (h) If a licensee or facility is required by law to deny
7 employment or to terminate employment of any employee based
8 on written notification from the department that the employee has
9 a prior criminal conviction or is determined unsuitable for
10 employment under Section 1569.58, the licensee or facility shall
11 not incur civil liability or unemployment insurance liability as a
12 result of that denial or termination.

13 (i) *Notwithstanding any other provision of law, the department*
14 *may provide an individual with a copy of his or her state or*
15 *federal level criminal offender record information search*
16 *response as provided to that department by the Department of*
17 *Justice if the department has denied a criminal background*
18 *clearance based on this information and the individual makes a*
19 *written request to the department for a copy specifying an*
20 *address to which it is to be sent. The state or federal level*
21 *criminal offender record information search response shall not*
22 *be modified or altered from its form or content as provided by*
23 *the Department of Justice and shall be provided to the address*
24 *specified by the individual in his or her written request. The*
25 *department shall retain a copy of the individual's written request*
26 *and the response and date provided.*

27 SEC. 11. Section 1569.24 of the Health and Safety Code is
28 amended to read:

29 1569.24. Within 90 days after a facility accepts its first
30 resident for placement following its initial licensure, the
31 department shall inspect the facility to evaluate compliance with
32 rules and regulations and to assess the facility's continuing
33 ability to meet regulatory requirements. The licensee shall notify
34 the department, within five business days after accepting its first
35 resident for placement, that the facility has commenced
36 operating.

37 The department may take appropriate remedial action as
38 provided for in this chapter.

39 SEC. 12. Section 1575.7 of the Health and Safety Code is
40 amended to read:

1 1575.7. (a) (1) The State Department of Health Services,
2 prior to issuing a new license, shall obtain a criminal record
3 clearance for the administrator, program director, and fiscal
4 officer of the proposed adult day health care center. The
5 department shall obtain the criminal record clearances each time
6 these positions are to be filled. When the ~~Licensing and~~
7 ~~Certification Program~~ receives 95 percent of its total responses
8 indicating no evidence of recorded criminal information from the
9 Department of Justice within three business days, it shall issue an
10 conditions set forth in paragraph (3) of subdivision (a) of Section
11 1265.5, subparagraph (A) of paragraph (1) of subdivision (a) of
12 Section 1338.5, and paragraph (1) of subdivision (a) of Section
13 1736.6 are met, the licensing and certification program shall
14 issue an All Facilities Letter (AFL) informing facility licensees.
15 After the AFL is issued, ~~licensees facilities~~ shall not allow newly
16 hired administrators, program directors, and fiscal officers to
17 have direct contact with clients or residents of the facility prior to
18 completion of the criminal record clearance. A criminal record
19 clearance shall be complete when the department has obtained
20 the person's criminal offender record information search
21 response from the Department of Justice and has determined that
22 the person is not disqualified from engaging in the activity for
23 which clearance is required. ~~Notwithstanding any other provision~~
24 ~~of law, the department may, without taking regulatory action~~
25 ~~pursuant to Chapter 3.5 (commencing with Section 11340) of~~
26 ~~Part 1 of Division 3 of Title 2 of the Government Code,~~
27 ~~implement, interpret, or make specific this paragraph by means~~
28 ~~of an AFL or similar instruction.~~

29 (2) ~~A criminal record clearance shall be complete when the~~
30 ~~department has obtained the person's criminal record information~~
31 ~~from the Department of Justice and has determined that the~~
32 ~~person is not disqualified from engaging in the activity for which~~
33 ~~clearance is required.~~

34 (3)
35 (2) The criminal record clearance shall require the
36 administrator, program director, and fiscal officer to submit
37 electronic fingerprint images to the department. ~~The department~~
38 ~~shall explore options to work with private and governmental~~
39 ~~agencies to ensure that licensees have adequate access to~~
40 ~~electronic transmission sites, including requiring the department~~

~~to maintain a contract for electronic transmission services in each of the district offices where facilities have indicated problems with timely access to electronic transmission sites or consistent delays of more than three business days in obtaining appointments for electronic transmission services through a private entity, government agency, or law enforcement agency.~~

~~Department of Justice.~~

(4) An applicant and any other person specified in this subdivision, as part of the background clearance process, shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of his or her knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit fingerprint images as part of a criminal background clearance process. Every applicant shall provide information on any prior administrative action taken against him or her by any federal, state, or local government agency and shall certify that, to the best of his or her knowledge, the information provided is true. An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of his or her application or exemption or revocation of any exemption previously granted.

(b) A past conviction of any crime, especially any crime involving misuse of funds or involving physical abuse shall, in the discretion of the department, be grounds for denial of the license, and shall be grounds to prohibit the person from providing services in an adult day health care center.

(c) Suspension of the applicant from the Medi-Cal program or prior violations of statutory provisions or regulations relating to licensure of a health facility, community care facility, or clinic shall also be grounds for a denial of licensure, where determined by the state department to indicate a substantial probability that the applicant will not comply with this chapter and regulations adopted hereunder.

(d) No applicant which is licensed as a health facility, community care facility, or clinic may be issued a license for an

1 adult day health care center while there exists a subsisting,
2 uncorrected violation of the statutes or regulations relating to
3 such licensure.

4 (e) The department shall develop procedures to ensure that any
5 licensee, direct care staff, or certificate holder for whom a
6 criminal record has been obtained pursuant to this section or
7 Section 1265.5 or 1736 shall not be required to obtain multiple
8 criminal record clearances.

9 (f) *Notwithstanding any other provision of law, the department*
10 *may provide an individual with a copy of his or her state or*
11 *federal level criminal offender record information search*
12 *response as provided to that department by the Department of*
13 *Justice if the department has denied a criminal background*
14 *clearance based on this information and the individual makes a*
15 *written request to the department for a copy specifying an*
16 *address to which it is to be sent. The state or federal level*
17 *criminal offender record information search response shall not*
18 *be modified or altered from its form or content as provided by*
19 *the Department of Justice and shall be provided to the address*
20 *specified by the individual in his or her written request. The*
21 *department shall retain a copy of the individual's written request*
22 *and the response and date provided.*

23 SEC. 13. Section 1596.871 of the Health and Safety Code is
24 amended to read:

25 1596.871. The Legislature recognizes the need to generate
26 timely and accurate positive fingerprint identification of
27 applicants as a condition of issuing licenses, permits, or
28 certificates of approval for persons to operate or provide direct
29 care services in a child care center or family child care home. It
30 is the intent of the Legislature in enacting this section to require
31 the fingerprints of those individuals whose contact with child day
32 care facility clients may pose a risk to the children's health and
33 safety. An individual shall be required to obtain either a criminal
34 record clearance or a criminal record exemption from the State
35 Department of Social Services before his or her initial presence
36 in a child day care facility.

37 (a) (1) Before issuing a license or special permit to any person
38 to operate or manage a day care facility, the department shall
39 secure from an appropriate law enforcement agency a criminal
40 record to determine whether the applicant or any other person

1 specified in subdivision (b) has ever been convicted of a crime
2 other than a minor traffic violation or arrested for any crime
3 specified in Section 290 of the Penal Code, for violating Section
4 245 or 273.5, subdivision (b) of Section 273a or, prior to January
5 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
6 any crime for which the department cannot grant an exemption if
7 the person was convicted and the person has not been exonerated.

8 (2) The criminal history information shall include the full
9 criminal record, if any, of those persons, and subsequent arrest
10 information pursuant to Section 11105.2 of the Penal Code.

11 (3) Except during the 2003–04, 2004–05, 2005–06, 2006–07,
12 and 2007–08 fiscal years, neither the Department of Justice nor
13 the department may charge a fee for the fingerprinting of an
14 applicant who will serve six or fewer children or any family day
15 care applicant for a license, or for obtaining a criminal record of
16 an applicant pursuant to this section.

17 (4) The following shall apply to the criminal record
18 information:

19 (A) If the State Department of Social Services finds that the
20 applicant or any other person specified in subdivision (b) has
21 been convicted of a crime, other than a minor traffic violation,
22 the application shall be denied, unless the director grants an
23 exemption pursuant to subdivision (f).

24 (B) If the State Department of Social Services finds that the
25 applicant, or any other person specified in subdivision (b), is
26 awaiting trial for a crime other than a minor traffic violation, the
27 State Department of Social Services may cease processing the
28 application until the conclusion of the trial.

29 (C) If no criminal record information has been recorded, the
30 Department of Justice shall provide the applicant and the State
31 Department of Social Services with a statement of that fact.

32 (D) If the State Department of Social Services finds after
33 licensure that the licensee, or any other person specified in
34 paragraph (2) of subdivision (b), has been convicted of a crime
35 other than a minor traffic violation, the license may be revoked,
36 unless the director grants an exemption pursuant to subdivision
37 (f).

38 (E) An applicant and any other person specified in subdivision
39 (b) shall submit fingerprint images and related information to the
40 Department of Justice and the Federal Bureau of Investigation,

1 through the Department of Justice, for a state and federal level
2 criminal offender record information search, in addition to the
3 search required by subdivision (a). If an applicant meets all other
4 conditions for licensure, except receipt of the Federal Bureau of
5 Investigation's criminal history information for the applicant and
6 persons listed in subdivision (b), the department may issue a
7 license if the applicant and each person described by subdivision
8 (b) has signed and submitted a statement that he or she has never
9 been convicted of a crime in the United States, other than a
10 traffic infraction as defined in paragraph (1) of subdivision (a) of
11 Section 42001 of the Vehicle Code. If, after licensure, the
12 department determines that the licensee or person specified in
13 subdivision (b) has a criminal record, the license may be revoked
14 pursuant to Section 1596.885. The department may also suspend
15 the license pending an administrative hearing pursuant to Section
16 1596.886.

17 (b) (1) In addition to the applicant, this section shall be
18 applicable to criminal convictions of the following persons:

19 (A) Adults responsible for administration or direct supervision
20 of staff.

21 (B) Any person, other than a child, residing in the facility.

22 (C) Any person who provides care and supervision to the
23 children.

24 (D) Any staff person, volunteer, or employee who has contact
25 with the children.

26 (i) A volunteer providing time-limited specialized services
27 shall be exempt from the requirements of this subdivision if this
28 person is directly supervised by the licensee or a facility
29 employee with a criminal record clearance or exemption, the
30 volunteer spends no more than 16 hours per week at the facility,
31 and the volunteer is not left alone with children in care.

32 (ii) A student enrolled or participating at an accredited
33 educational institution shall be exempt from the requirements of
34 this subdivision if the student is directly supervised by the
35 licensee or a facility employee with a criminal record clearance
36 or exemption, the facility has an agreement with the educational
37 institution concerning the placement of the student, the student
38 spends no more than 16 hours per week at the facility, and the
39 student is not left alone with children in care.

1 (iii) A volunteer who is a relative, legal guardian, or foster
2 parent of a client in the facility shall be exempt from the
3 requirements of this subdivision.

4 (iv) A contracted repair person retained by the facility, if not
5 left alone with children in care, shall be exempt from the
6 requirements of this subdivision.

7 (v) Any person similar to those described in this subdivision,
8 as defined by the department in regulations.

9 (E) If the applicant is a firm, partnership, association, or
10 corporation, the chief executive officer, other person serving in
11 like capacity, or a person designated by the chief executive
12 officer as responsible for the operation of the facility, as
13 designated by the applicant agency.

14 (F) If the applicant is a local educational agency, the president
15 of the governing board, the school district superintendent, or a
16 person designated to administer the operation of the facility, as
17 designated by the local educational agency.

18 (G) Additional officers of the governing body of the applicant,
19 or other persons with a financial interest in the applicant, as
20 determined necessary by the department by regulation. The
21 criteria used in the development of these regulations shall be
22 based on the person's capability to exercise substantial influence
23 over the operation of the facility.

24 (H) This section does not apply to employees of child care and
25 development programs under contract with the State Department
26 of Education who have completed a criminal record clearance as
27 part of an application to the Commission on Teacher
28 Credentialing, and who possess a current credential or permit
29 issued by the commission, including employees of child care and
30 development programs that serve both children subsidized under,
31 and children not subsidized under, a State Department of
32 Education contract. The Commission on Teacher Credentialing
33 shall notify the department upon revocation of a current
34 credential or permit issued to an employee of a child care and
35 development program under contract with the State Department
36 of Education.

37 (I) This section does not apply to employees of a child care
38 and development program operated by a school district, county
39 office of education, or community college district under contract
40 with the State Department of Education who have completed a

1 criminal record clearance as a condition of employment. The
2 school district, county office of education, or community college
3 district upon receiving information that the status of an
4 employee's criminal record clearance has changed shall submit
5 that information to the department.

6 (2) Nothing in this subdivision shall prevent a licensee from
7 requiring a criminal record clearance of any individuals exempt
8 from the requirements under this subdivision.

9 (c) (1) (A) Subsequent to initial licensure, any person
10 specified in subdivision (b) and not exempted from fingerprinting
11 shall, as a condition to employment, residence, or presence in a
12 child day care facility be fingerprinted and sign a declaration
13 under penalty of perjury regarding any prior criminal conviction.
14 The licensee shall submit fingerprint images and related
15 information to the Department of Justice and the Federal Bureau
16 of Investigation, through the Department of Justice, or to comply
17 with paragraph (1) of subdivision (h), prior to the person's
18 employment, residence, or initial presence in the child day care
19 facility.

20 (B) These fingerprint images for the purpose of obtaining a
21 permanent set of fingerprints shall be electronically submitted to
22 the Department of Justice in a manner approved by the State
23 Department of Social Services and to the Department of Justice,
24 or to comply with paragraph (1) of subdivision (h), as required in
25 this section, shall result in the citation of a deficiency, and an
26 immediate assessment of civil penalties in the amount of one
27 hundred dollars (\$100) per violation, per day for a maximum of
28 five days, unless the violation is a second or subsequent violation
29 within a 12-month period in which case the civil penalties shall
30 be in the amount of one hundred dollars (\$100) per violation for
31 a maximum of 30 days, and shall be grounds for disciplining the
32 licensee pursuant to Section 1596.885 or Section 1596.886. The
33 State Department of Social Services may assess civil penalties
34 for continued violations permitted by Sections 1596.99 and
35 1597.62. The fingerprint images and related information shall
36 then be submitted to the department for processing. Within 14
37 calendar days of the receipt of the fingerprint images, the
38 Department of Justice shall notify the State Department of Social
39 Services of the criminal record information, as provided in this
40 subdivision. If no criminal record information has been recorded,

1 the Department of Justice shall provide the licensee and the State
2 Department of Social Services with a statement of that fact
3 within 14 calendar days of receipt of the fingerprint images. If
4 new fingerprint images are required for processing, the
5 Department of Justice shall, within 14 calendar days from the
6 date of receipt of the fingerprint images, notify the licensee that
7 the fingerprints were illegible.

8 (C) Documentation of the individual's clearance or exemption
9 shall be maintained by the licensee, and shall be available for
10 inspection. When live-scan technology is operational, as defined
11 in Section 1522.04, the Department of Justice shall notify the
12 department, as required by that section, and notify the licensee by
13 mail within 14 days of electronic transmission of the fingerprints
14 to the Department of Justice, if the person has no criminal record.
15 Any violation of the regulations adopted pursuant to Section
16 1522.04 shall result in the citation of a deficiency and an
17 immediate assessment of civil penalties in the amount of one
18 hundred dollars (\$100) per violation, per day for a maximum of
19 five days, unless the violation is a second or subsequent violation
20 within a 12-month period in which case the civil penalties shall
21 be in the amount of one hundred dollars (\$100) per violation for
22 a maximum of 30 days, and shall be grounds for disciplining the
23 licensee pursuant to Section 1596.885 or Section 1596.886. The
24 department may assess civil penalties for continued violations, as
25 permitted by Sections 1596.99 and 1597.62.

26 (2) Except for persons specified in paragraph (2) of
27 subdivision (b), the licensee shall endeavor to ascertain the
28 previous employment history of persons required to be
29 fingerprinted under this subdivision. If it is determined by the
30 department, on the basis of fingerprints submitted to the
31 Department of Justice, that the person has been convicted of a
32 sex offense against a minor, an offense specified in Section
33 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony,
34 the State Department of Social Services shall notify the licensee
35 to act immediately to terminate the person's employment,
36 remove the person from the child day care facility, or bar the
37 person from entering the child day care facility. The department
38 may subsequently grant an exemption pursuant to subdivision (f).
39 If the conviction was for another crime except a minor traffic
40 violation, the licensee shall, upon notification by the State

1 Department of Social Services, act immediately to either (1)
2 terminate the person's employment, remove the person from the
3 child day care facility, or bar the person from entering the child
4 day care facility; or (2) seek an exemption pursuant to
5 subdivision (f). The department shall determine if the person
6 shall be allowed to remain in the facility until a decision on the
7 exemption is rendered. A licensee's failure to comply with the
8 department's prohibition of employment, contact with clients, or
9 presence in the facility as required by this paragraph shall result
10 in a citation of deficiency and an immediate assessment of civil
11 penalties by the department against the licensee, in the amount of
12 one hundred dollars (\$100) per violation, per day for a maximum
13 of five days, unless the violation is a second or subsequent
14 violation within a 12-month period in which case the civil
15 penalties shall be in the amount of one hundred dollars (\$100)
16 per violation for a maximum of 30 days, and shall be grounds for
17 disciplining the licensee pursuant to Section 1596.885 or
18 1596.886.

19 (3) The department may issue an exemption on its own motion
20 pursuant to subdivision (f) if the person's criminal history
21 indicates that the person is of good character based on the age,
22 seriousness, and frequency of the conviction or convictions. The
23 department, in consultation with interested parties, shall develop
24 regulations to establish the criteria to grant an exemption
25 pursuant to this paragraph.

26 (4) Concurrently with notifying the licensee pursuant to
27 paragraph (3), the department shall notify the affected individual
28 of his or her right to seek an exemption pursuant to subdivision
29 (f). The individual may seek an exemption only if the licensee
30 terminates the person's employment or removes the person from
31 the facility after receiving notice from the department pursuant to
32 paragraph (3).

33 (d) (1) For purposes of this section or any other provision of
34 this chapter, a conviction means a plea or verdict of guilty or a
35 conviction following a plea of nolo contendere. Any action that
36 the department is permitted to take following the establishment
37 of a conviction may be taken when the time for appeal has
38 elapsed, when the judgment of conviction has been affirmed on
39 appeal, or when an order granting probation is made suspending
40 the imposition of sentence, notwithstanding a subsequent order

1 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
2 permitting the person to withdraw his or her plea of guilty and to
3 enter a plea of not guilty, or setting aside the verdict of guilty, or
4 dismissing the accusation, information, or indictment. For
5 purposes of this section or any other provision of this chapter, the
6 record of a conviction, or a copy thereof certified by the clerk of
7 the court or by a judge of the court in which the conviction
8 occurred, shall be conclusive evidence of the conviction. For
9 purposes of this section or any other provision of this chapter, the
10 arrest disposition report certified by the Department of Justice, or
11 documents admissible in a criminal action pursuant to Section
12 969b of the Penal Code, shall be prima facie evidence of
13 conviction, notwithstanding any other provision of law
14 prohibiting the admission of these documents in a civil or
15 administrative action.

16 (2) For purposes of this section or any other provision of this
17 chapter, the department shall consider criminal convictions from
18 another state or federal court as if the criminal offense was
19 committed in this state.

20 (e) The State Department of Social Services may not use a
21 record of arrest to deny, revoke, or terminate any application,
22 license, employment, or residence unless the department
23 investigates the incident and secures evidence, whether or not
24 related to the incident of arrest, that is admissible in an
25 administrative hearing to establish conduct by the person that
26 may pose a risk to the health and safety of any person who is or
27 may become a client. The State Department of Social Services is
28 authorized to obtain any arrest or conviction records or reports
29 from any law enforcement agency as necessary to the
30 performance of its duties to inspect, license, and investigate
31 community care facilities and individuals associated with a
32 community care facility.

33 (f) (1) After review of the record, the director may grant an
34 exemption from disqualification for a license or special permit as
35 specified in paragraphs (1) and (4) of subdivision (a), or for
36 employment, residence, or presence in a child day care facility as
37 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
38 director has substantial and convincing evidence to support a
39 reasonable belief that the applicant and the person convicted of
40 the crime, if other than the applicant, are of good character so as

1 to justify issuance of the license or special permit or granting an
2 exemption for purposes of subdivision (c). However, an
3 exemption may not be granted pursuant to this subdivision if the
4 conviction was for any of the following offenses:

5 (A) An offense specified in Section 220, 243.4, or 264.1,
6 subdivision (a) of Section 273a or, prior to January 1, 1994,
7 paragraph (1) of Section 273a, Section 273d, 288, or 289,
8 subdivision (a) of Section 290, or Section 368 of the Penal Code,
9 or was a conviction of another crime against an individual
10 specified in subdivision (c) of Section 667.5 of the Penal Code.

11 (B) A felony offense specified in Section 729 of the Business
12 and Professions Code or Section 206 or 215, subdivision (a) of
13 Section 347, subdivision (b) of Section 417, or subdivision (a) or
14 (b) of Section 451 of the Penal Code.

15 (2) The department may not prohibit a person from being
16 employed or having contact with clients in a facility on the basis
17 of a denied criminal record exemption request or arrest
18 information unless the department complies with the
19 requirements of Section 1596.8897.

20 (g) Upon request of the licensee, who shall enclose a
21 self-addressed stamped postcard for this purpose, the Department
22 of Justice shall verify receipt of the fingerprint images.

23 (h) (1) For the purposes of compliance with this section, the
24 department may permit an individual to transfer a current
25 criminal record clearance, as defined in subdivision (a), from one
26 facility to another, as long as the criminal record clearance has
27 been processed through a state licensing district office, and is
28 being transferred to another facility licensed by a state licensing
29 district office. The request shall be in writing to the department,
30 and shall include a copy of the person's driver's license or valid
31 identification card issued by the Department of Motor Vehicles,
32 or a valid photo identification issued by another state or the
33 United States government if the person is not a California
34 resident. Upon request of the licensee, who shall enclose a
35 self-addressed stamped envelope for this purpose, the department
36 shall verify whether the individual has a clearance that can be
37 transferred.

38 (2) The State Department of Social Services shall hold
39 criminal record clearances in its active files for a minimum of
40 two years after an employee is no longer employed at a licensed

1 facility in order for the criminal record clearances to be
2 transferred.

3 (3) The following shall apply to a criminal record clearance or
4 exemption from the department or a county office with
5 department-delegated licensing authority:

6 (A) A county office with department-delegated licensing
7 authority may accept a clearance or exemption from the
8 department.

9 (B) The department may accept a clearance or exemption from
10 any county office with department-delegated licensing authority.

11 (C) A county office with department-delegated licensing
12 authority may accept a clearance or exemption from any other
13 county office with department-delegated licensing authority.

14 (4) With respect to notifications issued by the Department of
15 Justice pursuant to Section 11105.2 of the Penal Code concerning
16 an individual whose criminal record clearance was originally
17 processed by the department or a county office with
18 department-delegated licensing authority, all of the following
19 shall apply:

20 (A) The Department of Justice shall process a request from the
21 department or a county office with department-delegated
22 licensing authority to receive the notice, only if all of the
23 following conditions are met:

24 (i) The request shall be submitted to the Department of Justice
25 by the agency to be substituted to receive the notification.

26 (ii) The request shall be for the same applicant type as the type
27 for which the original clearance was obtained.

28 (iii) The request shall contain all prescribed data elements and
29 format protocols pursuant to a written agreement between the
30 department and the Department of Justice.

31 (B) (i) On or before January 7, 2005, the department shall
32 notify the Department of Justice of all county offices that have
33 department-delegated licensing authority.

34 (ii) The department shall notify the Department of Justice
35 within 15 calendar days of the date on which a new county office
36 receives department-delegated licensing authority or a county's
37 delegated licensing authority is rescinded.

38 (C) The Department of Justice shall charge the department or
39 a county office with department-delegated licensing authority a
40 fee for each time a request to substitute the recipient agency is

1 received for purposes of this paragraph. This fee shall not exceed
2 the cost of providing the service.

3 *(i) Notwithstanding any other provision of law, the department*
4 *may provide an individual with a copy of his or her state or*
5 *federal level criminal offender record information search*
6 *response as provided to that department by the Department of*
7 *Justice if the department has denied a criminal background*
8 *clearance based on this information and the individual makes a*
9 *written request to the department for a copy specifying an*
10 *address to which it is to be sent. The state or federal level*
11 *criminal offender record information search response shall not*
12 *be modified or altered from its form or content as provided by*
13 *the Department of Justice and shall be provided to the address*
14 *specified by the individual in his or her written request. The*
15 *department shall retain a copy of the individual's written request*
16 *and the response and date provided.*

17 SEC. 14. Section 1728.1 of the Health and Safety Code is
18 amended to read:

19 1728.1. (a) To qualify for a home health agency license, the
20 following requirements shall be met:

21 (1) Every applicant shall satisfy the following conditions:

22 (A) Be of good moral character. If the applicant is a firm,
23 association, organization, partnership, business trust, corporation,
24 or company, all principal managing members thereof, and the
25 person in charge of the agency for which application for license
26 is made, shall satisfy this requirement. If the applicant is a
27 political subdivision of the state or other governmental agency,
28 the person in charge of the agency for which application for
29 license is made, shall satisfy this requirement.

30 (B) Possess and demonstrate the ability to comply with this
31 chapter and the rules and regulations adopted under this chapter
32 by the state department.

33 (C) File his or her application pursuant to and in full
34 compliance with this chapter.

35 (2) (A) The following persons shall submit to the State
36 Department of Health Services an application and shall submit
37 electronic fingerprint images to the Department of Justice for the
38 furnishing of the person's criminal record to the state department,
39 at the person's expense as provided in subdivision (b), for the
40 purpose of a criminal record review:

1 (i) The owner or owners of a private agency if the owners are
2 individuals.

3 (ii) If the owner of a private agency is a corporation,
4 partnership, or association, any person having a 10 percent or
5 greater interest in that corporation, partnership, or association.

6 (iii) The administrator of a home health agency.

7 (B) ~~When the Licensing and Certification Program receives 95~~
8 ~~percent of its total responses indicating no evidence of recorded~~
9 ~~criminal information from the Department of Justice within three~~
10 ~~business days, it conditions set forth in paragraph (3) of~~
11 ~~subdivision (a) of Section 1265.5, subparagraph (A) of~~
12 ~~paragraph (1) of subdivision (a) of Section 1338.5, and~~
13 ~~paragraph (1) of subdivision (a) of Section 1736.6 are met, the~~
14 ~~licensing and certification program shall issue an All Facilities~~
15 ~~Letter (AFL) informing facility licensees. After the AFL is~~
16 ~~issued, licensees facilities must not allow newly hired~~
17 ~~administrators, program directors, and fiscal officers to have~~
18 ~~direct contact with clients or residents of the facility prior to~~
19 ~~completion of the criminal record clearance. A criminal record~~
20 ~~clearance shall be complete when the department has obtained~~
21 ~~the person's criminal offender record information search~~
22 ~~response from the Department of Justice and has determined that~~
23 ~~the person is not disqualified from engaging in the activity for~~
24 ~~which clearance is required. Notwithstanding any other provision~~
25 ~~of law, the department may, without taking regulatory action~~
26 ~~pursuant to Chapter 3.5 (commencing with Section 11340) of~~
27 ~~Part 1 of Division 3 of Title 2 of the Government Code,~~
28 ~~implement, interpret, or make specific this paragraph by means~~
29 ~~of an AFL or similar instruction.~~

30 (b) The persons specified in paragraph (2) of subdivision (a)
31 shall be responsible for any costs associated with transmitting the
32 electronic fingerprint images. The fee to cover the processing
33 costs of the Department of Justice, not including the costs
34 associated with capturing or transmitting the fingerprint images
35 and related information, shall not exceed thirty-two dollars (\$32)
36 per submission. ~~The department shall explore options to work~~
37 ~~with private and governmental agencies to ensure that licensees~~
38 ~~have adequate access to electronic transmission sites, including~~
39 ~~requiring the department to maintain a contract for electronic~~
40 ~~transmission services in each of the district offices where~~

1 facilities have indicated problems with timely access to
2 electronic transmission sites or consistent delays of more than
3 three business days in obtaining appointments for electronic
4 transmission services through a private entity, government
5 agency, or law enforcement agency.

6 (c) If the criminal record review conducted pursuant to
7 paragraph (2) of subdivision (a) discloses a conviction for a
8 felony or any crime that evidences an unfitness to provide home
9 health services, the application for a license shall be denied or the
10 person shall be prohibited from providing service in the home
11 health agency applying for a license. This subdivision shall not
12 apply to deny a license or prohibit the provision of service if the
13 person presents evidence satisfactory to the state department that
14 the person has been rehabilitated and presently is of such good
15 character as to justify the issuance of the license or the provision
16 of service in the home health agency.

17 (d) An applicant and any other person specified in this section,
18 as part of the background clearance process, shall provide
19 information as to whether or not the person has any prior
20 criminal convictions, has had any arrests within the past
21 12-month period, or has any active arrests, and shall certify that,
22 to the best of his or her knowledge, the information provided is
23 true. This requirement is not intended to duplicate existing
24 requirements for individuals who are required to submit
25 fingerprint images as part of a criminal background clearance
26 process. Every applicant shall provide information on any prior
27 administrative action taken against him or her by any federal,
28 state, or local government agency and shall certify that, to the
29 best of his or her knowledge, the information provided is true. An
30 applicant or other person required to provide information
31 pursuant to this section that knowingly or willfully makes false
32 statements, representations, or omissions may be subject to
33 administrative action, including, but not limited to, denial of his
34 or her application or exemption or revocation of any exemption
35 previously granted.

36 SEC. 15. Section 1736.6 of the Health and Safety Code is
37 amended to read:

38 1736.6. ~~The Legislature hereby finds and declares that 90~~
39 ~~percent of all criminal record reports processed by Department of~~
40 ~~Justice's Licensing and Certification Program are now cleared~~

1 ~~within three business days after they are received by the~~
2 ~~department, while the remaining 10 percent require individual~~
3 ~~processing, investigation, and determination.~~

4 (a) (1) A criminal record clearance shall be conducted by the
5 department for all home health aides by electronically submitting
6 fingerprint images and related information to the Department of
7 Justice. The Licensing and Certification Program shall issue an
8 All Facilities Letter (AFL) to facility licensees when *it*
9 *determines that* both of the following criteria ~~are met~~ *have been*
10 *met for a period of 30 days:*

11 (A) The program receives, within three business days, 95
12 percent of its total responses indicating no evidence of recorded
13 criminal information from the Department of Justice.

14 (B) The program processes 95 percent of its total responses
15 requiring disqualification *with notices mailed to the individual* in
16 accordance with ~~paragraph (2) of subdivision (e)~~ *subdivision (a)*
17 of Section 1736.5, no later than 45 days after the date that the
18 report is received from the Department of Justice.

19 (2) After the AFL is issued, ~~licensees~~ *facilities* must not allow
20 newly hired administrators, program directors, and fiscal officers
21 to have direct contact with clients or residents of the facility prior
22 to completion of the criminal record clearance. A criminal record
23 clearance shall be complete when the department has obtained
24 the person's criminal offender record information search
25 response from the Department of Justice and has determined that
26 the person is not disqualified from engaging in the activity for
27 which clearance is required. ~~Notwithstanding any other provision~~
28 ~~of law, the department may, without taking regulatory action~~
29 ~~pursuant to Chapter 3.5 (commencing with Section 11340) of~~
30 ~~Part 1 of Division 3 of Title 2 of the Government Code,~~
31 ~~implement, interpret, or make specific this subdivision by means~~
32 ~~of an AFL or similar instruction.~~ Applicants shall be responsible
33 for any costs associated with capturing or transmitting the
34 fingerprint images and related information. The fee to cover the
35 processing costs of the Department of Justice, not including the
36 costs associated with capturing or transmitting the fingerprint
37 images and related information, shall not exceed thirty-two
38 dollars (\$32) per submission. ~~The department shall explore~~
39 ~~options to work with private and governmental agencies to~~
40 ~~ensure that licensees have adequate access to electronic~~

1 transmission sites, including requiring the department to maintain
2 a contract for electronic transmission services in each of the
3 district offices where facilities have indicated problems with
4 timely access to electronic transmission sites or consistent delays
5 of more than three business days in obtaining appointments for
6 electronic transmission services through a private entity,
7 government agency, or law enforcement agency.

8 (3) An applicant or certificate holder who may be disqualified
9 on the basis of a criminal conviction shall provide the
10 department with a certified copy of the judgment of each
11 conviction. In addition, the individual may, during a period of
12 two years after the department receives the criminal record
13 report, provide the department with evidence of good character
14 and rehabilitation in accordance with subdivision (a) of Section
15 1736.5. Upon receipt of a new application for certification of the
16 individual, the department may receive and consider the evidence
17 during the two-year period without requiring additional
18 fingerprint imaging to clear the individual.

19 (4) The department's Licensing and Certification Program
20 shall explore and implement methods for maximizing its
21 efficiency in processing criminal record clearances within the
22 requirements of law, including a streamlined clearance process
23 for persons that have been disqualified in the basis of criminal
24 convictions that do not require automatic denial pursuant to
25 subdivision (a) of Section 1736.5.

26 (b) Upon enrollment in a training program for home health
27 aide certification, and prior to direct contact with residents, a
28 candidate for training shall submit a training and examination
29 application to the department and submit electronic fingerprint
30 images and related information to receive a criminal record
31 review through the Department of Justice. This criminal record
32 clearance shall be completed prior to direct contact with
33 residents. Submission of the fingerprint images to the Federal
34 Bureau of Investigation, through the Department of Justice, shall
35 be at the discretion of the state department.

36 ~~(e) New home health aide applicants who are unemployed and~~
37 ~~unable to pay the fee charged by the Department of Justice~~
38 ~~pursuant to paragraph (1) of subdivision (a) due to financial~~
39 ~~hardship may request a waiver for a period not to exceed six~~
40 ~~months. The request for waiver shall be made in writing at the~~

1 time the fingerprint images and related information are submitted
2 for processing. The applicant shall agree to pay the fee within six
3 months of employment. The failure to pay the fee within the
4 six-month period shall result in the inactivation of the applicant's
5 certificate until the fee is paid in full.

6 ~~(d) Upon receipt of the fingerprints, the Department of Justice~~
7 ~~shall notify the state department of the criminal record~~
8 ~~information, as provided for in this subdivision. If no criminal~~
9 ~~record information has been recorded, the Department of Justice~~
10 ~~shall provide the state department with a statement of that fact. If~~
11 ~~the fingerprint images are illegible, the Department of Justice~~
12 ~~shall, within 15 calendar days from receipt of the fingerprint~~
13 ~~images, notify the state department of that fact.~~

14 ~~(e) The department shall respond to the applicant and~~
15 ~~employer within 30 days from the date of receipt of the~~
16 ~~fingerprint images and related information.~~

17 ~~(f)~~

18 ~~(c)~~ A criminal record clearance, consistent with this section
19 shall be implemented for home health aide applicants beginning
20 July 1, 1998, and phased in for all certified home health aides by
21 June 30, 2000.

22 ~~(g)~~

23 ~~(d)~~ The department shall develop procedures to ensure that
24 any licensee, direct care staff, or certificate holder for whom a
25 criminal record has been obtained pursuant to this section or
26 Section 1265.6 or 1338.5 shall not be required to obtain multiple
27 criminal record clearances.

28 ~~(h)~~

29 ~~(e)~~ An applicant and any other person specified in this
30 subdivision, as part of the background clearance process, shall
31 provide information as to whether or not the person has any prior
32 criminal convictions, has had any arrests within the past
33 12-month period, or has any active arrests, and shall certify that,
34 to the best of his or her knowledge, the information provided is
35 true. This requirement is not intended to duplicate existing
36 requirements for individuals who are required to submit
37 fingerprint images as part of a criminal background clearance
38 process. Every applicant shall provide information on any prior
39 administrative action taken against him or her by any federal,
40 state, or local government agency and shall certify that, to the

1 best of his or her knowledge, the information provided is true. An
2 applicant or other person required to provide information
3 pursuant to this section that knowingly or willfully makes false
4 statements, representations, or omissions may be subject to
5 administrative action, including, but not limited to, denial of his
6 or her application or exemption or revocation of any exemption
7 previously granted.

8 (i)

9 (f) If, at any time, the department *determines that it* does not
10 meet the standards specified in subparagraphs (A) and (B) of
11 paragraph (1) of subdivision (a) for a period of 90 *consecutive*
12 days, the requirements in subdivision (a) shall be ~~suspended~~
13 *inoperative* until the department ~~can demonstrate~~ *determines that*
14 that it has met those standards for a period of 90 *consecutive*
15 days.

16 (g) *During any period of time in which the requirements of*
17 *subdivision (a) are inoperative, home health agencies may allow*
18 *newly hired home health aides to have direct contact with*
19 *patients after those persons have submitted Livescan fingerprint*
20 *images to the Department of Justice, and the department shall*
21 *issue an AFL advising facilities of this change in the statutory*
22 *requirement.*

23 (h) *Notwithstanding any other provision of law, the*
24 *department may provide an individual with a copy of his or her*
25 *state or federal level criminal offender record information search*
26 *response as provided to that department by the Department of*
27 *Justice if the department has denied a criminal background*
28 *clearance based on this information and the individual makes a*
29 *written request to the department for a copy specifying an*
30 *address to which it is to be sent. The state or federal level*
31 *criminal offender record information search response shall not*
32 *be modified or altered from its form or content as provided by*
33 *the Department of Justice and shall be provided to the address*
34 *specified by the individual in his or her written request. The*
35 *department shall retain a copy of the individual's written request*
36 *and the response and date provided.*

37 SEC. 16. Section 1743.9 of the Health and Safety Code is
38 amended to read:

39 1743.9. (a) To qualify for a private duty nursing agency
40 license, the following requirements shall be met:

1 (1) Every applicant shall satisfy the following conditions:

2 (A) Be of good moral character. If the applicant is a firm,
3 association, organization, partnership, business trust, corporation,
4 or company, all principal managing members thereof, and the
5 person in charge of the agency for which application for a license
6 is made, shall satisfy this requirement. If the applicant is a
7 political subdivision of the state or other governmental agency,
8 the person in charge of the agency for which application for a
9 license is made shall satisfy this requirement.

10 (B) Possess and demonstrate the ability to comply with this
11 chapter and the rules and regulations adopted under this chapter
12 by the department.

13 (C) File his or her application pursuant to and in full
14 compliance with this chapter.

15 (2) (A) The following persons shall submit to the department
16 an application, and shall submit fingerprint images and related
17 information to the Department of Justice, for the furnishing of the
18 person's criminal record to the department, at the person's
19 expense as provided in subdivision (b), for the purpose of a
20 criminal record review:

21 (i) The owner or owners of a private agency if the owners are
22 individuals.

23 (ii) If the owner of a private agency is a corporation,
24 partnership, or association, any person having a 10 percent or
25 greater interest in that corporation, partnership, or association.

26 (iii) The administrator of a private duty nursing agency.

27 ~~(3) A criminal record clearance shall be complete when the~~
28 ~~department has obtained from the Department of Justice the~~
29 ~~person's criminal record and has determined that the person is~~
30 ~~not disqualified from engaging in the activity for which clearance~~
31 ~~is required.~~

32 *(3) When the conditions set forth in paragraph (3) of*
33 *subdivision (a) of Section 1265.5, subparagraph (A) of*
34 *paragraph (1) of subdivision (a) of Section 1338.5, and*
35 *paragraph (1) of subdivision (a) of Section 1736.6 are met, the*
36 *licensing and certification program shall issue an All Facilities*
37 *Letter (AFL) informing facility licensees. After the AFL is issued,*
38 *facilities shall not allow newly hired administrators, program*
39 *directors, and fiscal officers to have direct contact with clients or*
40 *residents of the facility prior to completion of the initial record*

1 *clearance. A criminal record clearance shall be complete when*
2 *the department has obtained the person's criminal offender*
3 *record information search response from the Department of*
4 *Justice and has determined that the person is not disqualified*
5 *from engaging in the activity for which the clearance is required.*

6 *(b) Notwithstanding any other provision of law, the*
7 *department may provide an individual with a copy of his or her*
8 *state or federal level criminal offender record information search*
9 *response as provided to that department by the Department of*
10 *Justice if the department has denied a criminal background*
11 *clearance based on this information and the individual makes a*
12 *written request to the department for a copy specifying an*
13 *address to which it is to be sent. The state or federal level*
14 *criminal offender record information search response shall not*
15 *be modified or altered from its form or content as provided by*
16 *the Department of Justice and shall be provided to the address*
17 *specified by the individual in his or her written request. The*
18 *department shall retain a copy of the individual's written request*
19 *and the response and date provided.*

20 *(4) An applicant and any other person specified in this*
21 *subdivision, as part of the background clearance process, shall*
22 *provide information as to whether or not the person has any prior*
23 *criminal convictions, has had any arrests within the past*
24 *12-month period, or has any active arrests, and shall certify that,*
25 *to the best of his or her knowledge, the information provided is*
26 *true. This requirement is not intended to duplicate existing*
27 *requirements for individuals who are required to submit*
28 *fingerprint images as part of a criminal background clearance*
29 *process. Every applicant shall provide information on any prior*
30 *administrative action taken against him or her by any federal,*
31 *state, or local government agency and shall certify that, to the*
32 *best of his or her knowledge, the information provided is true. An*
33 *applicant or other person required to provide information*
34 *pursuant to this section that knowingly or willfully makes false*
35 *statements, representations, or omissions may be subject to*
36 *administrative action, including, but not limited to, denial of his*
37 *or her application or exemption or revocation of any exemption*
38 *previously granted.*

39 ~~(b)~~

1 (c) The persons specified in paragraph (2) of subdivision (a)
2 shall be responsible for any costs associated with capturing or
3 transmitting the fingerprint images and related information. The
4 fee to cover the processing costs of the Department of Justice,
5 not including the costs associated with capturing or transmitting
6 the electronic fingerprint images and related information, shall
7 not exceed thirty-two dollars (\$32) per submission.—The
8 department shall explore options to work with private and
9 governmental agencies to ensure that licensees have adequate
10 access to electronic transmission sites, including requiring the
11 department to maintain a contract for electronic transmission
12 services in each of the district offices where facilities have
13 indicated problems with timely access to electronic transmission
14 sites or consistent delays of more than three business days in
15 obtaining appointments for electronic transmission services
16 through a private entity, government agency, or law enforcement
17 agency.

18 (e)

19 (d) If the criminal record review conducted pursuant to
20 paragraph (2) of subdivision (a) discloses a conviction for a
21 felony or any crime that evidences an unfitness to provide private
22 duty nursing services, the application for a license shall be
23 denied, or the person shall be prohibited from providing service
24 in the private duty nursing agency applying for a license. This
25 subdivision shall not apply to deny a license or prohibit the
26 provision of service if the person presents evidence satisfactory
27 to the department that the person has been rehabilitated and
28 presently is of that good character that justifies the issuance of
29 the license or the provision of service in the private duty nursing
30 agency.

31 SEC. 18. Section 106700 of the Health and Safety Code is
32 amended to read:

33 106700. (a) A nonreturnable fee shall be paid by a person for
34 each application for registration, application for examination, and
35 biennial renewal.

36 (b) Fees shall not exceed the actual administrative costs of the
37 program. Fees, except retired and penalty fees, shall be subject to
38 Section 100425. The actual dollar figure charged shall be
39 rounded to the nearest whole dollar amount. The biennial
40 renewal fee-retired shall be twenty-five dollars (\$25).

(c) The nonreturnable biennial renewal fee shall be paid by each registered environmental health specialist on or before the first day of January of every second year, or on any other date that is determined by the department. Each registered environmental health specialist registered pursuant to this article shall first pay the biennial fee at the time of initial registration to cover the calendar year in which registration is acquired and the following calendar year. Registrations not maintained as required by this subdivision are suspended and remain invalid during the period of suspension. Suspended registrations become revoked three years after the date of suspension. Notwithstanding the provisions of the Government Code, the executive officer shall revoke suspended registrations after three years from the date of suspension for nonpayment of fees.

(d) An additional penalty fee equal to 50 percent of the biennial renewal fee for each year of delinquency or portion thereof shall be paid by each person who fails to pay the fee required by subdivision (c) within 30 days of the established due date. All accumulated penalty fees shall be paid prior to any revalidation of registration.

(e) The department shall receive and account for all money received pursuant to this article and shall deposit it with the Treasurer who shall keep the money in a separate fund to be known as the “Registered Environmental Health Specialist Fund,” which fund is hereby created.

(f) Notwithstanding Section 13340 of the Government Code, funds collected pursuant to the provisions of this article are continuously appropriated without regard to fiscal year to pay expenses of the department to administer the provisions of this article.

(g) The following fees are hereby established and shall be annually adjusted as required by subdivision (b):

(1) Application fee—ninety-five dollars (\$95).

(2) Examination fee—one hundred and twenty-six dollars (\$126).

(3) Biennial renewal fee—active—one hundred and seventy-five dollars (\$175).

SEC. 19. Section 116735 of the Health and Safety Code is amended to read:

1 116735. (a) In order to carry out the purposes of this
2 chapter, any duly authorized representative of the department
3 may, at any reasonable hour of the day, do any of the following:

4 (1) Enter and inspect any public water system or any place
5 where the public water system records are stored, kept, or
6 maintained.

7 (2) Inspect and copy any records, reports, test results, or other
8 information required to carry out this chapter.

9 (3) Set up and maintain monitoring equipment for purposes of
10 assessing compliance with this chapter.

11 (4) Obtain samples of the water supply.

12 (5) Photograph any portion of the system, any activity, or any
13 sample taken.

14 (b) The department shall inspect each public water system as
15 follows:

16 (1) A system with any surface water source with treatment
17 shall be inspected annually.

18 (2) A system with any groundwater source subject to treatment
19 with only groundwater sources shall be inspected biennially.

20 (3) A system with only groundwater sources not subject to
21 treatment shall be inspected every three years.

22 (c) Nothing in this section shall prohibit the department from
23 inspecting public water systems on a more frequent basis. An
24 opportunity shall be provided for a representative of the public
25 water system to accompany the representative of the department
26 during the inspection of the water system.

27 (d) It shall be a misdemeanor for any person to prevent,
28 interfere with, or attempt to impede in any way any duly
29 authorized representative of the department from undertaking the
30 activities authorized by subdivision (a).

31 SEC. 20. Section 5405 of the Welfare and Institutions Code is
32 amended to read:

33 5405. (a) This section shall apply to each facility licensed by
34 the State Department of Mental Health, or its delegated agent, on
35 or after January 1, 2003. For purposes of this section, "facility"
36 includes psychiatric health facilities, as defined in Section 1250.2
37 of the Health and Safety Code, licensed pursuant to Chapter 9
38 (commencing with Section 77001) of Division 5 of Title 22 of
39 the California Code of Regulations and mental health
40 rehabilitation centers licensed pursuant to Chapter 3.5

1 (commencing with Section 781.00) of Division 1 of Title 9 of the
2 California Code of Regulations.

3 (b) (1) (A) Prior to the initial licensure or first renewal of a
4 license on or after January 1, 2003, of any person to operate or
5 manage a facility specified in subdivision (a), the department
6 shall submit fingerprint images and related information
7 pertaining to the applicant or licensee to the Department of
8 Justice for purposes of a criminal record check, as specified in
9 paragraph (2), at the expense of the applicant or licensee. The
10 Department of Justice shall provide the results of the criminal
11 record check to the department. The department may take into
12 consideration information obtained from or provided by other
13 government agencies. The department shall determine whether
14 the applicant or licensee has ever been convicted of a crime
15 specified in subdivision (c). The department shall submit
16 fingerprint images and related information each time the position
17 of administrator, manager, program director, or fiscal officer of a
18 facility is filled and prior to actual employment for initial
19 licensure or an individual who is initially hired on or after
20 January 1, 2003. For purposes of this subdivision, “applicant”
21 and “licensee” include the administrator, manager, program
22 director, or fiscal officer of a facility.

23 (B) Commencing January 1, 2003, upon the employment of, or
24 contract with or for, any direct care staff the department shall
25 submit fingerprint images and related information pertaining to
26 the direct care staff person to the Department of Justice for
27 purposes of a criminal record check, as specified in paragraph
28 (2), at the expense of the direct care staff person or licensee. The
29 Department of Justice shall provide the results of the criminal
30 record check to the department. The department shall determine
31 whether the direct care staff person has ever been convicted of a
32 crime specified in subdivision (c). The department shall notify
33 the licensee of these results. No direct client contact by the
34 trainee or newly hired staff, or by any direct care contractor shall
35 occur prior to clearance by the department unless the trainee,
36 newly hired employee, contractor, or employee of the contractor
37 is constantly supervised.

38 (C) Commencing January 1, 2003, any contract for services
39 provided directly to patients or residents shall contain provisions
40 to ensure that the direct services contractor submits to the

1 department fingerprint images and related information pertaining
2 to the direct services contractor for submission to the Department
3 of Justice for purposes of a criminal record check, as specified in
4 paragraph (2), at the expense of the direct services contractor or
5 licensee. The Department of Justice shall provide the results of
6 the criminal record check to the department. The department
7 shall determine whether the direct services contractor has ever
8 been convicted of a crime specified in subdivision (c). The
9 department shall notify the licensee of these results.

10 (2) If the applicant, licensee, direct care staff person, or direct
11 services contractor specified in paragraph (1) has resided in
12 California for at least the previous seven years, the department
13 shall only require the submission of one set of fingerprint images
14 and related information. The Department of Justice shall charge a
15 fee sufficient to cover the reasonable cost of processing the
16 fingerprint submission. Fingerprints and related information
17 submitted pursuant to this subdivision include fingerprint images
18 captured and transmitted electronically. When requested, the
19 Department of Justice shall forward one set of fingerprint images
20 to the Federal Bureau of Investigation for the purpose of
21 obtaining any record of previous convictions or arrests pending
22 adjudication of the applicant, licensee, direct care staff person, or
23 direct services contractor. The results of a criminal record check
24 provided by the Department of Justice shall contain every
25 conviction rendered against an applicant, licensee, direct care
26 staff person, or direct services contractor, and every offense for
27 which the applicant, licensee, direct care staff person, or direct
28 services contractor is presently awaiting trial, whether the person
29 is incarcerated or has been released on bail or on his or her own
30 recognizance pending trial. The department shall request
31 subsequent arrest notification from the Department of Justice
32 pursuant to Section 11105.2 of the Penal Code.

33 (3) An applicant and any other person specified in this
34 subdivision, as part of the background clearance process, shall
35 provide information as to whether or not the person has any prior
36 criminal convictions, has had any arrests within the past
37 12-month period, or has any active arrests, and shall certify that,
38 to the best of his or her knowledge, the information provided is
39 true. This requirement is not intended to duplicate existing
40 requirements for individuals who are required to submit

1 fingerprint images as part of a criminal background clearance
2 process. Every applicant shall provide information on any prior
3 administrative action taken against him or her by any federal,
4 state, or local government agency and shall certify that, to the
5 best of his or her knowledge, the information provided is true. An
6 applicant or other person required to provide information
7 pursuant to this section that knowingly or willfully makes false
8 statements, representations, or omissions may be subject to
9 administrative action, including, but not limited to, denial of his
10 or her application or exemption or revocation of any exemption
11 previously granted.

12 (c) (1) The department shall deny any application for any
13 license, suspend or revoke any existing license, and disapprove
14 or revoke any employment or contract for direct services, if the
15 applicant, licensee, employee, or direct services contractor has
16 been convicted of, or incarcerated for, a felony defined in
17 subdivision (c) of Section 667.5 of, or subdivision (c) of Section
18 1192.7 of, the Penal Code, within the preceding 10 years.

19 (2) The application for licensure or renewal of any license
20 shall be denied, and any employment or contract to provide direct
21 services shall be disapproved or revoked, if the criminal record of
22 the person includes a conviction in another jurisdiction for an
23 offense that, if committed or attempted in this state, would have
24 been punishable as one or more of the offenses referred to in
25 paragraph (1).

26 (d) (1) The department may approve an application for, or
27 renewal of, a license, or continue any employment or contract for
28 direct services, if the person has been convicted of a
29 misdemeanor offense that is not a crime upon the person of
30 another, the nature of which has no bearing upon the duties for
31 which the person will perform as a licensee, direct care staff
32 person, or direct services contractor. In determining whether to
33 approve the application, employment, or contract for direct
34 services, the department shall take into consideration the factors
35 enumerated in paragraph (2).

36 (2) Notwithstanding subdivision (c), if the criminal record of a
37 person indicates any conviction other than a minor traffic
38 violation, the department may deny the application for license or
39 renewal, and may disapprove or revoke any employment or
40 contract for direct services. In determining whether or not to

1 deny the application for licensure or renewal, or to disapprove or
2 revoke any employment or contract for direct services, the
3 department shall take into consideration the following factors:

4 (A) The nature and seriousness of the offense under
5 consideration and its relationship to the person's employment,
6 duties, and responsibilities.

7 (B) Activities since conviction, including employment or
8 participation in therapy or education, that would indicate changed
9 behavior.

10 (C) The time that has elapsed since the commission of the
11 conduct or offense and the number of offenses.

12 (D) The extent to which the person has complied with any
13 terms of parole, probation, restitution, or any other sanction
14 lawfully imposed against the person.

15 (E) Any rehabilitation evidence, including character
16 references, submitted by the person.

17 (F) Employment history and current employer
18 recommendations.

19 (G) Circumstances surrounding the commission of the offense
20 that would demonstrate the unlikelihood of repetition.

21 (H) The granting by the Governor of a full and unconditional
22 pardon.

23 (I) A certificate of rehabilitation from a superior court.

24 (e) Denial, suspension, or revocation of a license, or
25 disapproval or revocation of any employment or contract for
26 direct services specified in subdivision (c) and paragraph (2) of
27 subdivision (d) are not subject to appeal, except as provided in
28 subdivision (f).

29 (f) After a review of the record, the director may grant an
30 exemption from denial, suspension, or revocation of any license,
31 or disapproval of any employment or contract for direct services,
32 if the crime for which the person was convicted was a property
33 crime that did not involve injury to any person and the director
34 has substantial and convincing evidence to support a reasonable
35 belief that the person is of such good character as to justify
36 issuance or renewal of the license or approval of the employment
37 or contract.

38 (g) A plea or verdict of guilty, or a conviction following a plea
39 of nolo contendere shall be deemed a conviction within the
40 meaning of this section. The department may deny any

1 application, or deny, suspend, or revoke a license, or disapprove
2 or revoke any employment or contract for direct services based
3 on a conviction specified in subdivision (c) when the judgment of
4 conviction is entered or when an order granting probation is
5 made suspending the imposition of sentence.

6 (h) (1) For purposes of this section, “direct care staff” means
7 any person who is an employee, contractor, or volunteer who has
8 contact with other patients or residents in the provision of
9 services. Administrative and licensed personnel shall be
10 considered direct care staff when directly providing program
11 services to participants.

12 (2) An additional background check shall not be required
13 pursuant to this section if the direct care staff or licensee has
14 received a prior criminal history background check while
15 working in a mental health rehabilitation center or psychiatric
16 health facility licensed by the department, and provided the
17 department has maintained continuous subsequent arrest
18 notification on the individual from the Department of Justice
19 since the prior criminal background check was initiated.

20 (3) When an application is denied on the basis of a conviction
21 pursuant to this section, the department shall provide the
22 individual whose application was denied with notice, in writing,
23 of the specific grounds for the proposed denial.

24 SEC. 21. Section 9719 of the Welfare and Institutions Code is
25 amended to read:

26 9719. (a) The office shall sponsor a meeting of
27 representatives of approved organizations at least twice each
28 year. The office shall provide training to these representatives as
29 appropriate. ~~Prior to acceptance by the office as designated~~
30 ~~ombudsmen, individuals shall receive a minimum of 36 hours of~~
31 ~~training.~~ *appropriate. Prior to the certification, by the office, of*
32 *an ombudsman, individuals shall meet the following*
33 *requirements:*

34 (1) *Have a criminal offender record clearance conducted by*
35 *the State Department of Social Services. A clearance pursuant to*
36 *Section 1569.17 of the Health and Safety Code shall constitute*
37 *clearances for the purpose of entry to any long-term care facility.*

38 (2) *Have received a minimum of 36 hours of training approved*
39 *by the office.*

1 (3) *Have received a minimum of 12 hours of additional*
2 *training annually.*

3 (b) Beginning July 1, 2007, the State Department of Social
4 Services shall conduct a criminal offender record information
5 search, pursuant to Section 1569.17 of the Health and Safety
6 Code, ~~and shall notify the office of the individual's suitability~~
7 ~~status. The State Department of Social Services' criminal record~~
8 ~~clearance shall be completed prior to the designation as an~~
9 ~~ombudsman, and shall be considered complete when the office~~
10 ~~obtains the person's criminal record clearance from the State~~
11 ~~Department of Social Services, or when the department has~~
12 ~~determined that the person is not disqualified from engaging in~~
13 ~~the activity for which the clearance is required. The office shall~~
14 ~~contract with the department to conduct the criminal background~~
15 ~~check process for prospective ombudsmen. Applicants for~~
16 ~~designation as an ombudsman shall not be responsible for any~~
17 ~~cost associated with transmitting the fingerprint images and~~
18 ~~related information or conducting criminal record clearances.~~
19 ~~Upon acceptance, designated ombudsmen shall receive a card~~
20 ~~issued by the California Department of Aging identifying the~~
21 ~~bearer as an official ombudsman. Each ombudsman shall receive~~
22 ~~a minimum of 12 hours of additional training annually. Nothing~~
23 ~~in this subdivision shall be construed to prohibit the Department~~
24 ~~of Justice from assessing a fee pursuant to Section 11105 of the~~
25 ~~Penal Code to cover the cost of searching for or furnishing~~
26 ~~summary criminal offender record information. Code, for~~
27 ~~applicants seeking certification as ombudsmen. The department~~
28 ~~shall notify the individual and the office of the individual's~~
29 ~~clearance or denial.~~

30 (c) *Within a reasonable time after July 1, 2007, the office shall*
31 *seek the clearance of all ombudsmen already certified or*
32 *designated as of July 1, 2007. Applicants for certification as an*
33 *ombudsman and any currently certified or designated*
34 *ombudsman shall not be responsible for any costs associated*
35 *with transmitting the fingerprint images and related information*
36 *or conducting criminal record clearances.*

37 (d) *Nothing in this section shall be construed to prohibit the*
38 *Department of Justice from assessing a fee pursuant to Section*
39 *11105 of the Penal Code to cover the cost of searching for or*
40 *furnishing summary criminal offender record information.*

1 *SEC. 22. Section 1.5 of this bill incorporates amendments to*
2 *Section 1265.5 of the Health and Safety Code proposed by both*
3 *this bill and AB 2654. It shall only become operative if (1) both*
4 *bills are enacted and become effective on or before January 1,*
5 *2007, (2) each bill amends Section 1265.5 of the Health and*
6 *Safety Code, and (3) this bill is enacted after AB 2654, in which*
7 *case Section 1 of this bill shall not become operative.*

8 ~~SEC. 22.~~

9 *SEC. 23. No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *the only costs that may be incurred by a local agency or school*
12 *district will be incurred because this act creates a new crime or*
13 *infraction, eliminates a crime or infraction, or changes the*
14 *penalty for a crime or infraction, within the meaning of Section*
15 *17556 of the Government Code, or changes the definition of a*
16 *crime within the meaning of Section 6 of Article XIII B of the*
17 *California Constitution.*